

Regulations on Conducting International Tenders for State Procurement

Cabinet of Ministers of Ukraine Resolution #694 of 28 June 1997

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Cabinet of Ministers of Ukraine

Resolution #694

of 28 June 1997

Kyiv

On Organization and Conducting of International Auctions (tenders) for State Procurement of Goods (works, services) of Foreign Origin

In order to assure rational utilization of state budget funds and foreign loans, guaranteed by the Cabinet of Ministers of Ukraine, Cabinet of Ministers of Ukraine **RESOLVES** on the following:-

1. Approve the Regulations on Procedures of Organization and Conducting of International Auctions (tenders) for State Procurement of Goods (works, services) of Foreign Origin (annexed hereto).

Resolve, that state budget funds are transacted for payment of agreements (contracts) signed with suppliers (contractors) - winners of international auctions (tenders) via authorized banks, basing on the report on results of international auction (tender) approved by the Ministry of Foreign Economic Relations and Trade of Ukraine.

2. To the Currency and Credit Council of the Cabinet of Ministers of Ukraine: consider issues of possibility of providing guarantees of the Cabinet of Ministers of Ukraine to foreign creditors in order to assure the reimbursement of foreign loans by Ukrainian legal entities, borrowing the above mentioned loans for the purpose of financing procurements of goods (works, services) of foreign origin for state needs, under the conditions that these Ukrainian legal entities conduct international auctions (tenders), select supplier (contractor) and determine the final value of the agreement (contract) in cases when other is not provided for in the international agreements of Ukraine regarding foreign loans or in the conditions of the above mentioned loans;

consider and preliminary approve projects where foreign loans under the guarantees of the Cabinet of Ministers of Ukraine are required in order to finance procurements of goods (works, services) of foreign origin for state needs, as a rule, before international agreements of Ukraine regarding foreign loans are signed.

3. To the Ministry of Foreign Economic Relations and Trade of Ukraine: develop and approve during one month the form of report on results of international auction (tender) for state procurement of goods (works, services) of foreign origin;

control the organization and conducting of the above mentioned auctions (tenders);

engage State Information and Analytic Center for Monitoring of Foreign Commodity Markets and guarantee assistance to the interested enterprises, institutions, organizations in organization and conducting in Ukraine of international auctions (tenders) for state procurement of goods (works, services) of foreign origin and in case of request from auction (tender) customer - prompt revision and expertise of tender documents, tender bids, agreements (contracts) filed for auctions (tenders); within one month develop the procedures for the above mentioned expertise;

4. To the National Agency for Reconstruction and Development in cooperation with the Ministry of Foreign Economic Relations and Trade in order to optimize the efficiency of work and conduct professional training of the personnel of respective divisions of the Ministry of Foreign Economic Relations and Trade of Ukraine take steps towards attracting international technical aid.

5. To the State Control and Revision Service and other executive bodies during the revisions and examinations revise the process implementation of this Resolution in respect of utilization of state budget funds.

6. To the State Committee on Geology and Utilization of Mineral Resources in cooperation with the Ministry of Economy, Ministry of Foreign Economic Relations and Trade, Ministry of Finance, Ministry of Foreign Affairs, Ministry of Environment Protection and Nuclear Safety, State Committee on Monitoring of Labor Protection, State Property Fund and other interested federal executive authorities within six months develop and submit to the Cabinet of Ministers of Ukraine draft Regulations on Procedures of Organization and Conducting of Auctions (tenders) of Contracts for Utilization of Mineral Resources with Participation from Foreign Legal and Natural Entities.

7. Consider invalid the Resolution of the Cabinet of Ministers of Ukraine of 21 October 1993 #871 "On Approving of the Regulations on the Procedures of Organization and Conducting of International Auctions (tenders) in Ukraine", leaving valid the provision of the Regulations, approved by the above mentioned Resolution, regarding the organization and conducting of auctions (tenders) for the rights of utilization of mineral resources.

Executive Prime-Minister of Ukraine
V. Durdynets

APPROVED
by the Resolution #694
of 28 June 1997

**Regulations
on Procedures of Organization and Conducting
of International Auctions (tenders) for State Procurement
of Goods (works, services) of Foreign Origin**

Chapter I. General Provisions

1. These Regulations provide for the procedures of organization and conducting of international auctions (tenders) for state procurement of goods (works, services) of foreign origin (hereafter referred to as 'tenders').

The purpose of organization of tenders is to enhance the efficiency of state procurements, assure rational utilization of funds, support optimal price level and most favorable conditions of implementation of agreements (contracts), prevent imports into Ukraine of low quality goods, prevent economically ungrounded high pricing for goods (works, products) of foreign origin (hereafter referred to as products).

2. For the purposes of these Regulations the terms listed below are used in the following sense:

procurement- acquiring, in any way, including leasing, rent of products for direct utilization by the organizer of tenders as well as for delivery to the consumers, provided for in the agreement (contract), signed in written form between the supplier (contractor)- winner of tender and organizer of tenders;

organizer of tenders- federal and local executive authorities, Cabinet of Ministers of the Autonomous Republic of the Crimea, enterprises, institutions, organizations, not depending on the type of ownership, and other entities, procuring products for state needs for state budget funds or foreign loans, guaranteed by the Cabinet of Ministers of Ukraine, and in other cases when tenders are required by legislation;

goods- raw materials, industrial products, equipment and other items of any kind and description in solid, liquid or gas form, and electricity;

works- any activities, connected with construction, expansion, reconstruction, technical renovation, repairing and renovation of industrial, non-industrial, engineering, communications buildings, as well as other activities, connected with utilization of mineral resources during construction of engineering buildings;

services- any object of procurement which is not qualified neither as goods nor as works;

supplier (contractor)- business entity of any nationality, which confirmed its participation in tender and files or is going to file its tender application;

procurement agreement (contract) - agreement (contract) between organizer of tenders and supplier (contractor) - winner of this tender;

tender bid collateral (tender collateral)- guarantees given by supplier (contractor) to organizer of tenders regarding collateral for any liabilities, emerging from filing of tender application, which can be given in the form bank guarantee, letter of guarantee or check endorsed accepted by any bank, acceptable for customer, which is to be paid on customers order;

accepting tender bid- accepting of tender bid by organizer of tenders and agreement to transact due payment. Tender bid is considered accepted in case organizer of tenders does not refuse in written form to accept supplier's (contractor's) bid within the term determined in tender documents, but not later than it is provided for in paragraph 3 item 13 of these Regulations, after this bid was defined as a winner of the tender;

opening of tenders- means day, time and place of disclosing of tender bids;

closing of tenders- tender is closed after signing of procurement agreement (contract) between organizer of tenders and supplier (contractor) - winner of tender or in case all tender bids are refused by customer according to item 45 of these Regulations;

tender documents- documents prepared by organizer of tenders and distributed to suppliers (contractors) for preparation of tender bids;

tender bid- proposals regarding some particular item of procurement, prepared and filed for tender by supplier (contractor) according to the requirements of tender documents.

3. These Regulations are valid for procurements of products for state needs, purchased with state budget funds or foreign loans guaranteed by the Cabinet of Ministers of Ukraine, if minimum value of such procurement is 100.000 USD, as well as for all procurements of products with different financing, when, according to legislation and other normative acts, this financing shall be utilized basing on tender results.

4. These Regulations may not be applied for:

- a) procurements connected with the interests of national defense and security;
- b) procurements classified by the legislation of Ukraine as secret;
- c) in other special cases, provided for in the legislation of Ukraine.

5. If an international agreement, to which Ukraine is a party, and which is proved to be binding by the Supreme Rada of Ukraine, provides for a different rules

of tenders, than those of these Regulations, provisions of this international agreement shall be applied.

These Regulations shall not be applied with respect of implementation of agreements on foreign loans guaranteed by the Cabinet of Ministers of Ukraine, granted by international financial organizations, foreign financial and credit institutions, which require their specific procurement tender procedures.

6. Supplier (contractors) are allowed to participate in tenders regardless of their nationality and form of ownership, excluding cases, when participation in tenders is limited by nationality requirements according to the legislation or international agreements of Ukraine.

Organizer of tenders shall not implement any discriminatory actions to suppliers (contractors) and products proposed by them through allowing them to participate in tenders.

Chapter II. General Rules of Conducting Tenders

7. Organizer of tenders shall include information about the tender in its invitation to suppliers (contractors) for participation in tender, according to the provisions of these Regulations.

Documents, mentioned in these Regulations, are sent by organizer of tenders or authorized organization to supplier (contractor), and by supplier (contractor) to organizer of tenders or authorized by organizer of tenders organization in the form, providing for written description of the contents of these documents.

In special cases, when procedures of competitive negotiations are applied, tender bids, transmitted via facsimile, telegraph or telex shall describe information necessary for estimation of bids, including final price, proposed for tender, and application with confirmation of agreement with all conditions, terms and other requirements of tender and tender documents. Tender bids shall be confirmed by supplier (contractor) at once by a letter or signed copy of telex, telegram or facsimile. Tender bids are not accepted via telephone.

Organizer of tenders shall avoid any discrimination of suppliers (contractors) through establishing forms of transmission and reception of documents, notifications and decisions.

8. Information on the procedures of tender, on which the report on results of tender prepared by customer is based, shall be stored during three years and include:

a) short description of products, subject to procurement;

b) name and address of suppliers (contractors), filing tender bids, applications for preliminary qualification, and name and address of supplier (contractor) with whom procurement agreement (contract) was signed, as well as the value of this agreement (contract);

c) information on professional qualifications of suppliers (contractors) filing tender bids, applications for preliminary qualification, or remark about non-availability of such data;

d) price and short description of other basic conditions of other tender bids and procurement agreements (contracts), as well as of additional conditions, proposed by suppliers (contractors);

e) short description of tender bid estimation and comparison criteria for determining of the winner;

f) in case all tender bids are refused basing on item 45 of these Regulations - notification about this with description of respective reasons;

g) in case all tender bids are refused basing on item 17 of these Regulations - notification about this with description of respective reasons;

h) reasons and conditions, why organizer of tenders chose different method of conducting tender than open procedures or open procedures with preliminary qualification, and grounds for selection of this particular method;

i) grounds for establishing terms for procurements under conditions provided for in paragraph 2 items 28 and 58 of these Regulations;

j) short description of all inquiries for clarifications regarding preliminary qualification or tender documents, responses thereto, as well as any changes to these documents.

9. Not confidential information, indicated in the subparagraphs «c» and «f» of the 8 paragraph of this Regulation shall be provided by the request of any person when tender proposal is accepted or when tenders are finished if this information did not lead to conclusion of the contract (agreement) of purchase.

10. Not confidential information, indicated in the subparagraphs «c», «f» and «j» of the 8 paragraph of this Regulation shall be provided by the request of suppliers (contractors) which presented tender proposals or applications on participation in the preliminary qualification when tender proposal is accepted or when tenders are finished if this information did not lead to conclusion of the contract (agreement) of purchase. Cabinet of Ministers of Ukraine, Ministry of Foreign Economic Relations and Trade, courts, arbitration courts may require this information even before tender proposal is accepted of tenders finished.

If otherwise is not provided by the decision of the court or arbitration court organizer of tenders taking into account such decision shall not disclose following information:

a) information which provision contradicts legislation, prevents its observance or does not correspond to the state interests of disputing parties or prevents fair competition between suppliers (contractors);

b) information concerning consideration, assessment or comparison of tender proposals except information indicated in paragraphs 8 and 10 of this Regulation.

11. Organizer of tenders is not responsible before suppliers (contractors) for losses caused only by not providing information indicated in paragraphs 8 and 10 of this Regulation.

12. Not later than 7 calendar days after determining winner of the tenders organizer has to present written report on the results of the tenders for confirmation, according to the established standards to the Ministry of Foreign Economic Relations and Trade

13. If Ministry of Foreign Economic Relations and Trade discovers substantial infringement of tenders procedures influencing impartial determination of the winner of tenders or leading to the discrimination of suppliers (contractors) then Ministry of Foreign Economic Relations and Trade will invalidate results of such tenders.

Contract (agreement) of purchase is concluded with the winner of the tenders when report on the results of the tenders is confirmed by the Ministry of Foreign Economic Relations and Trade.

Not later than 5 calendar days after confirmation of the report on the results of tenders by the Ministry of Foreign Economic Relations and Trade , organizer of tenders has to inform in the written form all suppliers (contractors) participating in the tenders about results of determining winner of tenders.

Organizer of tenders is publishing information on the results of tenders in the newspaper «Golos Ukrainy» or «Uriadoviy Kyr'er».

14. Invitation to the tender or information about preliminary qualification and all other tender documents are drawn up in Ukrainian and one of the foreign languages. Texts in two languages shall be authentic and have equal validity.

15. If organizer of tenders requires from suppliers (contractors) tender bid collateral this request shall be addressed to all suppliers (contractors).

Tender bid collateral shall not exceed one per cent of the expected price of a contract (agreement) of purchase when tenders are conducted in the area of construction and 5 per cent - when tenders are conducted in other areas.

Tender bid collateral from another organization shall be agreed with the organizer of tenders before submitting tender proposals.

Organizer of tenders shall indicate in tender documents requirements as to the organization which provides tender bid collateral, form and main requirements to the provision of tender bid collateral including cases in which tender bid collateral will not be returned to the supplier (customer).

16. Tender bid collateral shall not be returned by the organizer of tenders in following cases:

a) when supplier (contractor) is calling off or changing tender proposal after the deadline for its submission;

b) if winner of tenders is not signing contract (agreement) of purchase when organizer insists on signing;

c) if winner of tenders is not giving appropriate guarantees as to the fulfillment of contract (agreement) when his tender proposal is accepted if these guarantees are provided by the tender documents;

d) if supplier (contractor) who had submitted tender proposal disagree with the correction of the arithmetic mistake of the organizer of tender discovered when comparing and estimating tender proposals.

Organizer of tenders shall not seek tender bid collateral and shall return appropriate amount to the supplier (contractor) within 10 calendar days except above indicated cases.

17. Organizer of tenders shall reject tender proposal if supplier (contractor) proposes, gives or agrees to give directly or indirectly to any officer in the performance of his duties or former officer the reward in any form. This can be done in the form of a proposal of employment, expensive present or service with the purpose of influencing decision concerning determining winner of tenders or applying by the organizer of tenders certain type of tenders procedure. Organizer of tenders shall inform supplier (contractor) about rejection of such tender proposal indicating respective reasons.

18. Participation of any supplier (contractor) in tenders can be ceased if he:

a) is bankrupt or is on the stage of liquidation; its activity is under the court's supervision or he coordinates his relations with creditors; if he has suspended economic activity or if he is in a similar situation;

b) was making professional violations connected with its economic activity proved by the measures accepted for the organizer of tenders;

c) was not fulfilling obligations according to the legislation of its country or Ukraine concerning payment of duties connected with social insurance;

d) did not fulfill obligations connected with tax payment according to the legislation of his country or Ukraine;

e) twisted facts when presenting information according to this paragraph and paragraphs 19 and 20 of this Resolution;

f) connected with actions indicated in paragraph 17 of this Regulation.

These reasons can not be applied to the events which were taking place three years ago.

19. Organizer of tenders can require from supplier (contractor) documents indicating its financial and economic state. Following documents can be required:

a) notes from the bank;

b) balance-sheets of the supplier (contractor) or summaries of the balance if publication of the balance is necessary according to the legislation of the supplier's (contractor's) country;

c) information concerning the total amount of all types of products and volume of products subject to tenders for the last three financial years;

d) copy of the document on state registration of the supplier (contractor);

e) other required documents.

In the notification about the preliminary qualification or in the invitation to tenders, organizer of tenders indicates what document or documents from the indicated in this paragraph shall be submitted and submits the list of additionally required documents (except above mentioned) which do not contain confidential information.

If due to any valid reasons supplier (contractor) is not able to submit organizer of tenders with such documents economic and financial state of the supplier (contractor) can be confirmed by other documents acceptable for the organizer of tenders.

20. Technical potential of the supplier (contractor) is confirmed by:

a) the list of similar to the submitted for consideration contracts (agreements) for the period of last year and the half indicating their price, date of conclusion and consignees;

b) the description of technical abilities of the supplier (contractor) and by information on measures applied by him to ensure quality, ecology safety of products and also by information not containing confidential information concerning its research potential;

c) information about the number of all technical experts or by the list of all technical subdivisions including those which are responsible for the control over the quality of products whether they are under the direct control of the supplier (contractor) or not;

d) samples, description or pictures of supplied products which authenticity shall be confirmed by documents if this is required by the organizer of tenders;

e) certificates issued by the official authorities which control quality or agencies licensed according to the legislation of the country of supplier (contractor) which confirm correspondence of the product's quality to the submitted specifications or product standards.

f) document on checking production abilities of the supplier (contractor) and, if necessary, its research potential and measures on controlling quality of products which can be done by the organizer of tenders or by authorized person by the organizer's instructions if supplied products are technically complicated or can be supplied only by definite supplier (contractor) and there are no reasonable alternative for it.

Organizer of tenders shall indicate in the notification about the preliminary qualification or in the invitation to tenders the list of required documents indicated in this paragraph. Information in these documents shall correspond to the purpose of purchase.

At all stages when organizing and holding tenders , organizer of tenders shall take into account interests of suppliers (contractors) in the protection of their technical or commercial secrets.

21. Description of products which is subject to purchase in documents on preliminary qualification, tender documents or other documents connected with attracting tender proposal shall correspond to the requirement to such information.

Any specifications, plans, drawings, pictures, etc. shall be executed to meet requirements of the technical and quality features of products subject to purchase.

To prepare any specifications, plans, pictures and drawings included into the tender documents and documents that for the preliminary qualification standard indexes, requirements, universal signs and terminology concerning technical and quantitative features of products subject to the purchase shall be applied to the greatest extend possible. Standard indexes shall be given on the bases of international standards (if they exist) and/or domestic national standards or construction norms.

When preparing tender documents organizer of tenders does not have the right to ask assistance in the organization which may have commercial interest to the purchase and accept its advises if this prevents competition between suppliers (contractors).

22. Purchase of products which is covered by this Regulation shall be fulfilled applying following methods of tenders holding:

a) open procedures when all interested suppliers (contractors) have the right to submit tender proposals;

b) open procedures with preliminary qualification - when tender proposals can be submitted only by those suppliers (contractors) which have the right to participate in tenders according to the results of preliminary qualification;

c) competitive negotiations procedures - when organizer of tenders informs suppliers (contractors) about its intention of purchase and discusses with one or with a few of them terms and conditions of the contract (agreement) of purchase.

23. Decision on holding tenders is made by the organizer of tenders on the basis of the respective decisions on allocation of the required amount of money or positive preliminary decision of the Currency and Credit Committee on expedience of giving guarantees of the cabinet of Ministers of Ukraine on foreign credits attracted for the purpose of financing state purchase.

By the instruction of the organizer of tenders organization and conduction of tenders can be done by specialized organizations.

After making decision on conducting tenders , organizer of tenders establishes tender committee which includes representatives of the organizer of tenders, respective ministries, other central bodies of the executive power, project and other interested organizations including representatives determined by State Committee (in case of purchase). The head of the tender committee is the head of the organization that has ordered tenders or officer of the organization that has ordered tenders appointed by the head.

Decision of the tender committee are made on the close meeting when not less that two thirds of its members are present by open voting by simple majority of votes. In the case of equal number of votes, vote of the head is decisive.

Decisions of the tender committee are executed in the form of protocol which is signed by all members of the tender committee which participated in voting.

To receive certificate of the state registration of tenders organizer of tenders shall submit to the Ministry of Foreign Economic Relations and Trade within determined by the Ministry terms and according to its procedures the set of required documents after he has accepted (confirmed, agreed) documents, technical and economic substantiation of purchase and coordinated them with ministries, other central bodies of the executive power according to the sector requirements and if necessary - with the bodies of local self-government.

Within 15 working days Ministry of Foreign Economic Relation and Trade examines compliance of the submitted documents to the requirements of this Regulation and fulfills state registration of tenders. If state registration is rejected documents shall be returned to the organizer of tenders with explanation of such rejection. Publication of the announcement about tenders, information about preliminary qualification and invitations to tenders can be fulfilled only after receiving certificate on the state registration of tenders in the Ministry of Foreign Economic Relation and Trade.

24. Purchase with the price of the contract (agreement) exceeding 100 000 US dollars or the equivalent of this amount in national currency of Ukraine shall be fulfilled through open tenders or through open tenders with preliminary qualification.

This purchase can be fulfilled through the procedure of competitive negotiations under terms and conditions indicated in paragraph 59 of this Regulation.

Purchase cannot be separated into smaller units for the purpose of avoiding application of open tenders or open tenders with preliminary qualification.

25. Purchase of services is fulfilled through open procedures with preliminary qualification.

In the exceptional cases when purchase of services through open procedures with preliminary qualification is unreasonable or practically impossible or under conditions indicated in the paragraph 59 of this Regulation, they can be fulfilled through the procedure of competitive negotiations taking into account when estimating and comparing tender proposals qualification information and experience of suppliers (contractors) of services.

Part III. Open procedures

Invitation and documents

26. Invitation to tenders shall be published by the organizer of tenders in the newspaper «Golos Ukraini» or «Uriadoviy Kur'er» and in foreign newspapers, namely, in technical magazines distributed by international catalogues. If necessary, organizer of tenders can announce about tenders by radio or television.

27. Invitation to tenders shall contain following information:

- a) name and address of the organizer of tenders;
- b) method of tenders holding, nature, quantity and place of goods shipment or service rendering or the nature and the place of the fulfillment of works;
- c) desirable or deadline for the shipment of goods, service rendering or fulfillment of works;
- d) method and place of receiving tender documents;
- e) amount of fees for tender documents if this payment is established by the organizer of tenders;
- f) currency and terms and conditions of payment for tender documents;
- g) language (languages) in which tender documents can be submitted to the participants;
- h) place and deadline for submitting tender proposals;
- i) desired or final date for receiving tender documents;

j) source of purchase financing.

28. Period for submitting tender documents shall be reasonable to properly execute them and shall not be less than 45 calendar days starting from the date indicated in the invitation to tenders according to the subparagraph 3 of the paragraph 27 of this Regulation.

In case of urgent situation minimum term indicated in the first abstract of this paragraph can be reduced to 15 calendar days. In addition, circumstances that provided such reduction shall not be caused by actions of the organizer of tenders for the purpose of reducing competition between suppliers (contractors).

29. Organizer of tenders shall submit suppliers (contractors) tender documents according to the procedures and requirements indicated in the invitation to tenders. Payment which can be required by the organizer of tenders for tender documents can reflect only expenses directly connected with their execution, printing and sending to the supplier (contractor).

30. Tender documents must contain:

instruction for suppliers (contractors) which shall contain terms and conditions of holding tenders and requirements concerning execution and submission of tender proposals according to this Regulation and other normative and legislative acts on tenders;

grounds for exclusion of suppliers (subcontractors) according to item 18 of this Provision;

information on the character and required technical and qualitative characteristics of products to be procured, in compliance with item 21 of this Provision, including relevant technical specifications, plans, designs, drawings; product quantity; place where works are conducted; ancillary services to be provided; desired terms or deadlines, if such are foreseen for goods supplies, execution of works or provision of services;

criteria to be used by the organizer of tenders when determining the best bid under item 41 of this Provision;

basic terms of agreement (contract) on procurement in the part which is already known to the organizer of tenders, and his project, if any, and which may be further signed by the parties;

if alternative characteristics of products or other requirements thereto are allowed - application thereof and evaluation method and comparison of competitive bids;

if suppliers (subcontractors) are allowed to submit bids only for a part of goods to be purchased, description of the part or parts thereof which may be bid;

methodology of calculation of bid price and indication of bid price, including its elements, except the cost of goods and works, for instance, cost of transportation, insurance, loading, unloading etc. The bid price shall not include expenses related to import duties, including customs duties;

name of currency (currencies) in which the bid price shall be calculated and indicated;

indication of language (languages) in which the bid shall be drawn up;

requirements of organizer of tenders with regard to bid security to be furnished by the suppliers (subcontractors);

grounds and terms for return and non-return of bid security;

indication of procedure, place and deadlines for bid submission taking into account requirements of item 28 of this Provision;

procedure on how suppliers (subcontractors) may apply for clarification

application on intention of the organizer of tenders (where necessary) to hold a meeting of suppliers (subcontractors);

indication of place, date and time of bid opening under item 37 of this Provision;

information on bid opening and bid evaluation procedure;

indication of currency to be used for bids evaluation and comparison under item 42 of this Provision and the exchange rate applicable for conversion of the bid price into this currency;

reference to this Provision, norms and regulations on bidding and regulations specifically relating to the object offered for bidding;

indication of the name, position and addresses of one or several officials or other employees of the organizer of tenders, authorized to maintain direct relationship with suppliers (subcontractors) and obtain from them without intermediaries being involved notices relating to the bidding procedure;

indication of the bid validity term;

reference to the necessity of reflection in the bids of any commitments of the supplier (subcontractor), other than those stipulated in the draft agreement (contract) on procurement (for example, commitments on counter trade or transfer of technologies);

entry as to the rights of the supplier (subcontractor) specified in items 72, 73 of this Provision, possibility to reconsider illegal actions or decisions of the organizer of tenders or the bidding procedure applied by the latter;

entry as to the right of the organizer of tenders to reject all bids under item 45 of this Provision;

additional requirements taking into account paragraph ten item 2 of this Provision, for bid acceptance and for effectiveness of agreement (contract) on procurement, including if it is provided for by current legislation, requirement as to its approval, and the projected term of approval of agreement (contract) on procurement taking into account sending notice on bid acceptance;

entry as to the form of bid performance security for agreement (contract) on procurement if provision of such security is required by the organizer of tenders.

31. The supplier (subcontractor) may apply the organizer of tenders for clarification relevant to bidding documents. The organizer of tenders shall, at least three days prior to the deadline for bids submission, provide answers to the questions of the supplier (subcontractor). The organizer of tenders shall notify on such clarification all suppliers (subcontractors) which have been provided with bidding documents without specifying the name of the inquirer.

Any time, before the deadline for submission of bids the organizer of tenders shall have the right, on any purpose or on his own initiative or upon the results of requests of the suppliers (subcontractors) amend bidding documents by issuing relevant annex which shall be approved and accorded under paragraph 5 item 23 of this Provision and sent to all suppliers (subcontractors), which have been provided with bidding documents by the organizer of tenders, and to the Ministry of Foreign Economic Relations and Trade.

If the organizer of tenders conducts a meeting with a view to clarify bidding documents, he shall draw up the minutes of the meeting and sent it to all suppliers (subcontractors) which have been provided with bidding documents, irrespective of their attendance of the meeting, and to the Ministry of Foreign Economic Relations and Trade.

In case of failure of the organizer of tenders to timely submit clarification as to the contents of bidding documents, amendments thereto, protocol of the meeting or if amendments to the bidding documents are of substantial nature, the organizer of tenders shall extend the deadline of tender bid submission.

A decision on extending the deadline for tender bid submission shall be made by the organizer of tenders proceeding from the fact that the deadline for submission of tender bids shall be sufficient to enable the supplier (subcontractor) to take into account the amendments, additions or clarifications

introduced by the organizer of tenders and prepare in due manner and timely submit his tender bid.

Tender bids submission

32. Bids may be submitted in any language, in which bidding documents have been drawn up, or in a language specified by the organizer of tenders in the bidding document.

33. Taking into account the requirement of item 28 of this Provision the organizer of tenders shall specify the place and the date and the deadline for submission of tender bids.

If there are substantial amendments to the tender bids, as provided for by item 31 of this Provision, the organizer of tenders shall extend the deadline for submission of tender bids taking into account the time required for preparation by suppliers (subcontractors) of their tender bids as specified in item 28 of this Provision.

The organizer of tenders shall not be bound, but shall have the right prior to the deadline for submission of tender bids, to extend this deadline if one or more suppliers (subcontractors) are not able to submit their tender bids by the specified date in view of force-major circumstances.

After the organizer of tenders has made relevant decision on extending the deadline for submission of tender bids, possible changes of the place and bid opening procedure shall be promptly notified, not later than 3 days, to the supplier (subcontractor), who has been provided with bidding documents, to the Ministry of Foreign Economic Relations and Trade.

34. Tender bids shall be signed and submitted in writing in sealed envelopes or in any other form specified in bidding documents.

The organizer of tenders shall upon request of supplier (subcontractor) confirm the receipt of his tender bid indicating the date and time.

The tender bid shall accompanied by the document confirming provision of bid security.

35. The tender bids obtained by the organizer of tenders after the deadline for their submission shall not be open considered and shall be returned to respective suppliers (subcontractors).

36. The tender bids shall be valid within the term specified in the bidding documents.

The organizer of tenders prior to this deadline shall have the right to request the extension of tender bids deadline for additional fixed period of time from the suppliers (subcontractors). The supplier (subcontractor) may reject this

request without losing his bid security and his bid validity will end in the date specified in the bidding documents.

The suppliers (subcontractors) who have agreed to extend their bid validity period shall extend the validity of bid securities provided or submit new bid securities for additional term of their bids validity. The suppliers (subcontractors) who have not extended their bids security validity period or have not provided new bid securities shall be considered as those rejecting the request as to extension of their bid validity.

The supplier (subcontractor) may amend or revoke his tender bid prior to the deadline for its submission without losing his tender bid security. Amendments to tender bids or notices on their revocation shall be taken into account if they were obtained by the organizer of tenders before the deadline for submission of tender bids.

Evaluation and comparison of tender bids

37. Tender bid opening shall take place not earlier than the deadline for submission of tender bids in the place and in accordance with the procedure specified in bidding documents.

All suppliers (subcontractors) who have submitted their tender bids or their authorized representatives, shall be allowed by the organizer of tenders to participate in the bid opening procedure.

For opening of tender bids of the suppliers (subcontractors) a special commission comprised of the members of tender committee shall be appointed by the order of the chairperson of tender committee.

After verification of availability of all documents and data required for participation in the bidding a special relevant protocol shall be drawn up.

The name and address of each supplier (subcontractor) whose bid is open, and the price of each tender bid shall be announced by the organizer of tenders to persons present at the time of tender bid opening, notified (upon request) to the suppliers (subcontractors) who have submitted tender bids but are not present or represented at the time of their opening. The above data shall be included into the protocol on tender bid opening.

38. The organizer of tenders may request the suppliers (subcontractors) to clarify their tender bids to facilitate their consideration, evaluation and comparison. Any amendments to tender bids as to their substance, including the changes of prices and changes designed to adjust the tender bid which does not meet formal requirements of bidding documents, with a view to bring it to conformity with such requirements, shall not be accepted, discussed and allowed.

If pure arithmetic mistakes are revealed in the tender bid, the organizer of tenders shall request clarification from the supplier (subcontractor) who has submitted them. The organizer of tenders shall have the right to make correction of the said arithmetic mistakes provided that he receives a written confirmation on consent with such correction from the supplier (subcontractor).

39. The organizer of tenders may consider the tender bid as the one meeting formal requirements, if it meets all requirements specified in the bidding documents.

40. The organizer of tenders shall not accept the tender bid:

a) if the supplier (subcontractor) who has submitted the tender bid does not meet qualification requirements (items 18,19,20 of this Provision);

b) if the supplier (subcontractor) who has submitted the tender bid does not give consent for correction of the arithmetic mistake revealed by the organizer of tenders under paragraph 2 of item 38 of this Provision;

c) if the actions of the supplier (subcontractor) resulted in the occurrence of circumstance specified in item 17 of this Provision.

41. The organizer of tenders shall determine the winner of tender based on the following criteria:

a) the lowest price on condition of provision of the required economy and efficiency of the products;

b) the most profitable tender bid, from the economic point of view, taking into account various criteria of bid evaluation: price, date of delivery, current expenditures, cost effectiveness, quality, esthetic and functional characteristic, ecologically safe, technical differences, after-sale maintenance of products and technical support for its production and maintenance, terms of payment, volumes of local resources' use, including means of production, labor and materials in production, which are proposed by the supplier (subcontractor), prospects of economic development, arising from bid implementation, including internal investments or other types of business activity, employment incentives, granting of an exclusive right for the supply of specific types of products to domestic suppliers (subcontractors), transfer of technology and training of management, scientific and production personnel etc. The organizer of tenders shall herewith specify in the bidding documents or respective annex, provided for by paragraph 2 of item 31 of this Provision, all criteria, which he intends to employ to determine the winner of tender.

When evaluating and comparing the tender bids under subparagraphs "a" or "b" of this item, the organizer of tenders shall be allowed to apply the preferential adjustment in the amount of 15 per cent in favor of tender bids on goods (works, services) of Ukrainian suppliers (subcontractors). The procedure

of application of preferential adjustment shall be determined by the organizer of tenders in the bidding documents.

42. For evaluation and comparison of tender bids the organizer of tenders shall use one of the currencies specified in the bidding documents.

If price, in currency selected by the organizer of tenders for comparison of tender bids, is missing in one of the tender bids, appropriate conversion shall be made by the organizer of tenders based on the official exchange rate of the National Bank of Ukraine or cross-rate determined based on the official exchange rate of the National Bank of Ukraine for respective currencies.

43. The organizer of tenders may request from the tender winner recognized as such based on criteria specified in subparagraph "b" of item 41 of this Provision, confirmation of his qualification data under items 19, 20 of this Provision.

If the supplier (subcontractor) who has submitted the tender bid shall be obliged to confirm his qualification data once again under this item, and he does not meet this request, the organizer of tenders shall reject his tender bid and determine the best bid among other bids under item 41 of this Provision. He shall also have the right to reject all other tender bids in accordance with paragraph 1 of item 45 of this Provision.

44. When considering, clarifying, evaluating and comparing tender bids and taking decisions on tender bids acceptance, information on relevant issues shall not be disclosed to the suppliers (subcontractors) or any other persons which do not officially participate in consideration, evaluation and comparison of tender bids, except the cases when such information is requested by the Cabinet of Ministers of Ukraine or a body duly authorized for consideration of complaints, by the court or the court of arbitration.

45. The organizer of tenders may reject all tender bids at any time prior to the tender bid acceptance, if it is provided for in the bidding documents. The organizer of tenders shall notify, upon request of any supplier (subcontractor) who has submitted a tender bid, on the reasons of rejection of all tender bids without substantiating them.

The organizer of tenders shall not be responsible before the suppliers (subcontractors) who have submitted their tender bids, should this item apply.

Notices on rejection of all tender bids shall be sent to all suppliers (subcontractors) who have submitted their tender bids, and to the Ministry of Foreign Economic Relations and Trade, not later than three days from the date of adoption of decision on rejection of all tender bids.

46. The organizer of tenders and any supplier (subcontractor) shall not be allowed to hold any negotiations with regard to tender bids submitted by the supplier (subcontractor), other than those relating to clarification of tender bids

on request of the organizer of tenders with a view to facilitate their consideration, evaluation and comparison.

47. Taking into account requirements of items 43 and 45 of this Provision, such tender bid shall be accepted which shall be recognized as the best one under item 41 of this Provision. Notification on tender bid acceptance shall be sent to the supplier (subcontractor) who has submitted it, and to the Ministry of Foreign Economic Relations and Trade, not later than three days from the date of determination of the tender winner.

48. The terms of the bidding documents shall specify that in case the supplier (subcontractor) is determined as the winner of the tender, he shall have to sign an agreement (contract) on procurement drawn up in writing in compliance with tender bid submitted. The organizer of tenders and the winner shall initiate preparation for conclusion of the agreement (contract) on procurement after notification on tender bid acceptance has been sent to the winner of the tender.

The contract on procurement shall be concluded with the winner of the tender after Ministry of Foreign Economic Relations and Trade has approved the report on the results of bidding.

If it is provided for by the legislation and is stipulated in the bidding documents that the contract on procurement is subject to additional approval by some state body, it shall become effective upon respective approval. Non-approval of agreement (contract) within the terms specified in the bidding documents shall not mean the extension of the tender bid validity term or extension of the tender bid security term under item 36 of this Provision.

If the supplier (subcontractor) whose tender bid has been accepted refuses to sign the contract on procurement drawn up in writing or does not provide the performance security, the organizer of tenders shall determine the best tender bid under the item 41 of this Provision of those tender bids the validity term of which has not yet elapsed, reserving the right to reject all tender bids under paragraph 1 of item 45 of this Provision.

49. After agreement (contract) on procurement becomes effective the organizer of tenders shall not later than 5 days send appropriate written notice to other suppliers (contractors) who have taken part in auction, and to the Ministry of Foreign Economic Relations and Trade of Ukraine.

Section IV. Open Procedures with Preliminary Qualification

50. Organizer of tenders can conduct purchase through the use of open procedures with preliminary qualification under this Section.

If organizer of tenders makes a decision on the use of such procedure he has to determine required suppliers (contractors) through conducting of preliminary

qualification. After the completion of preliminary qualification organizer of tenders conducts subsequent auction with participation of these suppliers (contractors).

51. Notification on conducting of preliminary qualification is made through the invitation to auction which should include information under the paragraph 27 of these Regulations and information on criteria and procedures that will be applied for evaluation of suppliers' (contractors') qualification under paragraphs 18, 19 and 20 of these Regulations, as well as way and place to receive documents related to preliminary qualification; and date when these documents should be received.

When supplier (contractor) requests organizer of tenders to explain the procedure for conducting of preliminary qualification and appropriate documents which should be submitted to suppliers (contractors), then organizer of tenders is obliged to give such explanations related to preliminary qualification to all suppliers (contractors). If organizer of tenders gives such explanation not free of charge, the amount of payment includes only costs for documents and delivery of answers to suppliers (contractors).

52. Besides tender documents mentioned in paragraph 30 of these Regulations, organizer of tenders should submit to supplier (contractor) the following:

a) instructions on preparation and submission of application for participation in preliminary qualification;

b) procedure for conducting of suppliers' (contractors') preliminary qualification;

c) summary of main requirements with regard to produce which is the subject of purchase or general terms of agreement (contract) to be concluded under results of auction with participation of determined suppliers (contractors);

d) documents related to preliminary qualification of suppliers (contractors) according to paragraphs 19 and 20 of these Regulations; and criteria for evaluation of suppliers' (contractors') qualification who are participants of preliminary qualification;

e) requirements on submission of official evidence to confirm documents provided by supplier (contractor), related to his qualification or other official information for additional conformation of suppliers' (contractors') qualification;

f) the way as well as deadline for submission of applications to participate in preliminary qualification, taking into account requirements of these Regulations (paragraph 58);

g) requirements that can be established by organizer of tenders under these Regulations and other normative and legal acts on auction related to preparation and submission of applications for participation in preliminary qualification as well as preliminary qualification's procedures.

53. Organizer of tenders should follow criteria established in documents related to preliminary qualification, while making decisions on evaluation of each suppliers' (contractors') qualification data.

54. At the request of any supplier (contractor) who has not passed preliminary qualification organizer of tenders notifies appropriate reasons. At the same time organizer of tenders is not obliged to comment them.

55. Organizer of tenders can demand from any supplier (contractor) who has passed preliminary qualification, conformation of his qualification data; and has to provide information on results of submitted documents' consideration to each supplier (contractor) who should confirm his qualification data again.

56. Results of preliminary qualification should deal with purchase only of that produce for which it was conducted. However, organizer of tenders can establish the same procedure of preliminary qualification for the range of similar objects of purchase where preliminary qualification is provided. In a case of conducting of subsequent auction, suppliers (contractors) who have passed preliminary qualification do not further participate in these procedures. Otherwise, organizer of tenders invites other suppliers (contractors) to participate in preliminary qualification. If they pass it they do not further participate in preliminary qualification either. The customer has the right to demand from suppliers (contractors) who have passed preliminary qualification to confirm qualification.

57. After completion of preliminary qualification subsequent conducting of auction should correspond with requirements of these Regulations, Section III.

58. Notification on preliminary qualification and invitation for subsequent auction should provide for the period sufficient for proper preparation of tender proposals with taking into account existing needs of organizer of tenders on terms to conduct purchases. Except cases provided for by the second clause of this paragraph, the term to conduct preliminary qualification and submit tender proposals may not be less than 75 days from the date mentioned in the invitation for auction according to the sub-paragraph «i», paragraph 27 of these Regulations. Auction with participation of suppliers (contractors) who have passed preliminary qualification should be conducted after completion of preliminary qualification and deadline of tender proposals' submission.

In a case of urgent necessity, the term to conduct preliminary qualification can be 45 days. Actions of the organizer of tenders directed at the decrease of suppliers' (contractors') competitiveness should not cause circumstances that are the basis for such term.

Section V. Procedures of Competitive Negotiations

59. Procedures of competitive negotiations may be applied only in cases mentioned below if these procedures are well grounded and are not used for decrease of competitiveness between suppliers (contractors) or for their discrimination. And in particular:

a) if there is no tender proposals in response to announcement of open or open with preliminary qualification procedures;

b) when all tender proposals submitted by suppliers (contractors) to auction conducted with the use of open procedures or open procedures with preliminary qualification were rejected by the organizer of tenders because showed the plot of suppliers (contractors) , or were submitted by suppliers (contractors) who did not meet requirements of participation in auction reflected in the tender documents , if requirements to tender proposals were not substantially changed before the moment of supplier' (contractor') determination for conducting of competitive negotiations;

c) in a case of the Art's masterpieces purchases or purchases related to copyrights, in particular such as patents; or when there is no competitiveness because of technical reasons and produce can be supplied only by certain supplier (contractor) with no alternative;

d) in a case of urgent necessity to conduct certain purchase caused by circumstances which the organizer of tenders could not foresee and produce can not be purchased through auction with the use of open procedures or open procedures with preliminary qualification;

e) in a case of necessity to conduct additional supplies by initial suppliers (contractors) required for partial replacement or increase of supplies when change of suppliers (contractors) can enforce the organizer of tenders to purchase equipment or services that do not meet requirement of interchange with existing equipment or services;

f) when organizer of tenders purchases prototype or experimental run of produced goods or provided services developed under his order according to a separate agreement (contract) on research, experiment, studies or original treatment. In a case of fulfillment of such agreements (contracts) subsequent purchases of goods and services should be made in accordance with Sections III and IV;

g) when additional construction works not included to the initial agreement(contract), but conditioned in tender documents, due to unpredictable circumstances appeared to be necessary for completion of construction works mentioned in tender documents; if organizer of tenders needs to conclude agreement (contract) on additional construction works with supplier (contractor) that conducts construction works conditioned in the initial agreement (contract) because division of additional construction works mentioned in the initial agreement (contract) will become complicated by technical or economic reasons and create significant inconveniences for the organizer of tenders. However, a complete value of agreements (contracts) that are concluded for additional construction works can not exceed 50 per cent of the initial agreement's (contract's) value;

h) for new construction works that are repetition of similar construction works that correspond with typical project for which the initial agreement (contracts) on purchase was concluded according to Section III or IV, if the organizer of tenders in notification on planned purchased related to fulfillment of initial construction works mentioned that for purchases of new similar construction works procedures of competitive negotiations can be applied;

i) for purchases conducted with extremely favorable terms effective within very short period in a case of unexpected proposals' adoption from companies which are not common suppliers (contractors) of produce or in a case of property's purchases of enterprises under liquidation, or in a case of transition of property for management under auction. This sub-paragraph is not applied to elementary purchases from common suppliers of services;

j) in a case of conclusion of the agreement (contract) with architecture action's winner if this auction was organized according to requirements of these Regulations, especially related to notification on auction and invitation of sufficiently qualified services' suppliers (contractors) to participate in this auction, results of which are determined by an independent jury, meaning conclusion of the agreement (contract) on construction with auction's winner.

60. In a case of conducting of negotiations with several suppliers (contractors):

a) at first, the organizer of tenders considers tender proposals related to technical, quality and other characteristics of goods (works and services) as well as contractual terms of their supply and conducts separate negotiations on final elucidation of specification;

b) all requirements, instructions, explanations, documents and other information related to negotiations and submitted by the organizer of tenders to any suppliers (contractors) should be submitted at the same terms to all suppliers (contractors) participated in negotiations;

c) negotiations between organizer of tenders and supplier (contractor) should have a confidential character; no parties of negotiation should disclose technical, price or other information related to negotiations to any other party concerned without mutual consent;

d) after the completion of negotiations the organizer of tenders should request from all suppliers (contractors) that continue to participate in this procedure to submit final tender proposals with taking into account all negotiations' aspects and price of each tender proposals. It should be done within established period. After that organizer of tenders determines the best proposals among submitted ones. Negotiations with one supplier (contractor) can be conducted only in cases provided for by sub-paragraphs «c», «e» and «j», paragraph 59 of these Regulations.

61. Organizer of tenders is not committed to attract all suppliers (contractors) participated in initial auction with the use of open procedures or open procedures with preliminary qualification to the procedure of competitive negotiations but is obliged to provide, at least, participation of three suppliers (contractors).

Section VI. Financing of Auction

62. Expenses for preparation, organization and conducting of auction are financed from the funds of the organizer of tenders and are included to the cost of project. Estimate of expenses for organization and conducting of auction is prepared by the

customer or the company authorized by him to organize and conduct auction. The estimate is approved by the customer, agreed with the Ministry of Finance of Ukraine and submitted to the Ministry of Foreign Economic Relations and Trade of Ukraine together with tender documents with the aim of receiving Certificate on the state registration of auction.

Section VII. Procedure of Appealing

63. Any supplier (contractor) who states that he has sustained or will sustain damages as result of violation of these Regulations by the organizer of tenders, can demand to appeal actions of the organizer of tenders according to this Section.

64. A complaint on violations of the procedure to conduct auction by the organizer of tenders, his decisions, actions or inaction is submitted to the organizer of tenders or the Ministry of Foreign Economic Relations and Trade of Ukraine in writing.

65. Organizer of tenders or the Ministry of Foreign Economic Relations and Trade of Ukraine may not consider a complaint if it was submitted more than 15 days from the moment when there were grounds to complaint.

66. Organizer of tenders or the Ministry of Foreign Economic Relations and Trade of Ukraine must notify all suppliers (contractors), to whom this complaint relates, on its submission and contents, date and place of consideration. It should be done not later than three days from the moment of a complaint's receiving.

In a course of complaint's consideration any supplier (contractor) or state body concerned in the review of auction's results have the right to participate. Supplier (contractor) who did not participate in the review of auction's results is deprived the right for further appeal with such requirements.

67. Submission of a complaint according to the paragraph 64 of these Regulations suspends auction if a complaint has grounds and confirms that supplier (contractor) sustains damages if auction is not suspended, as well as if suspension of auction do not cause significant damages to the organizer of tenders.

The whole period to suspend auction can not exceed 30 calendar days.

If organizer of tenders confirms that with taking into account public interests auction should be continued then suspension provided for by this paragraph is not applied.

Any decision made by organizer of tenders under this paragraph as well as appropriate argumentation in connection with its approval is included to the report on the results of auction.

68. If it is impossible to settle a complaint by negotiations on the basis of mutual consent, the organizer of tenders or the Ministry of Foreign Economic Relations and Trade of Ukraine should make grounded decision within 15 calendar days. This decision should mention the following:

a) in a case when a complaint is not resolved - grounds for such decision;

b) in a case when a complaint is partially or completely resolved - measures to be taken to settle the problem.

When organizer of tenders considers a complaint, the aforementioned decision is sent to the Ministry of Foreign Economic Relations and Trade of Ukraine.

69. The Ministry of Foreign Economic Relations and Trade of Ukraine considers auction as invalid if significant violations in the procedure of auction are found under suppliers' (contractors') complaints that influence an objective determination of the auction's winner or lead to discrimination of suppliers (contractors).

The decision of the Ministry of Foreign Economic Relations and Trade of Ukraine is mandatory both for the organizer of tenders and suppliers (contractors); and is a ground for appealing to the court or the court of arbitration in connection with the recovery of damages related to the participation in auction.

70. A copy of the decision of the organizer of tenders or the Ministry of Foreign Economic Relations and Trade of Ukraine is sent to suppliers (contractors) who made a complaint within 5 days after decision's approval.

71. Decision of the organizer of tenders or the Ministry of Foreign Economic Relations and Trade of Ukraine is final if the organizer of tenders' or supplier (contractor) do not appeal to the court and the court of arbitration according to the paragraph 72 of these Regulations.

72. If the organizer of tenders or the Ministry of Foreign Economic Relations and Trade of Ukraine do not make a decision within the period mentioned in the first clause of the paragraph 68 of these Regulations, then suppliers (contractors) who made a complaint or the organizer of tenders have the immediate right to apply procedures according to the paragraph 73 of these Regulations.

73. The organizer of tenders as well as suppliers (contractors) have the right to appeal to the court or the court of arbitration according to the current legislation.