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**Working Party on the
Accession of Ukraine**

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ACCESSION OF UKRAINE

Memorandum on the Presidential Decree "On the Purchase of Goods, Works and Services for State Needs" of 1 June 1999, No. 595/99

The Governmental Commission on Ukraine's Accession to the WTO has provided the presidential decree reproduced hereunder.

With the purpose of ensuring the rational utilization of the State Budget funds of Ukraine, local budgets, state non-budgetary funds, state credit supplies aimed at the purchase of goods, works and services for the state needs, and according to Paragraph 4 of the Chapter XV "Transitional Provisions" of the Constitution of Ukraine, I hereby decree the following:

1. To approve the Regulations on the procedure for procurement of goods, works, and services for the state needs (attached)
2. The Ministry of Economy of Ukraine shall be responsible for performing intergovernmental co-ordination in the procurement of goods, works and services for the state needs.
3. The Cabinet of Ministers of Ukraine shall within the period of three months undertake the following measures :
 - bring all its decisions in compliance with this Decree
 - ensure the approval of normative and legal acts, required for the fulfilment of this Decree, and ensure that ministries, other central and local bodies of executive branch bring its normative and legal acts in compliance with the provisions of this Decree.
4. To consider null and void:
 - Article 6 of the Decree of the President "On Measures for Carrying out Common State Policy on Import Regulation", No.545, of 21 September 1994
 - Decree of the President of Ukraine " On the Purchase of Technical Equipment, Goods (Works and Services) for Cash, and also for Imports to Ensure Proper Activity of the Supreme Rada of Ukraine, Administration of the President and of the Cabinet of Ministers of Ukraine ", No.627, of 20 October 1994
 - Point 6 of Paragraph 4 of the Regulations of the Ministry of Foreign Economic Relations and Trade of Ukraine, approved by the Decree of the President of Ukraine No.1187, of 27 December 1995.

5. This decree shall come into force according to the procedure provided by Paragraph 4, Chapter XV of the Constitution of Ukraine “Transitional Provisions”.

President of Ukraine

L.Kuchma

Regulations

On the Procedure for the Procurement of Goods, Works and Services for State Needs

Section 1: General

1. These Regulations shall define the procedure for procurement of goods, works and services for the state needs by purchasers funded from the state funds.
2. For the purpose of these Regulations the following terms shall mean:

State Needs

Ukraine's needs in goods, works and services, that are necessary for solving social and economic problems, implementation of state programs and other projects, defined by legislation, ensuring the proper operation of state bodies, institutions, organizations supported by or funded by the State Budget of Ukraine and local budgets;

Purchaser

Ministries, other central executive bodies, legislative or judicial bodies, local executive bodies and local administration, and also institutions and organizations, subjected to them, enterprises and institutions authorized respectively by the Cabinet of Ministers of Ukraine or local executive bodies for carrying out government procurement of goods, works and services for state needs;

Procurement

Acquisition of goods, works and services by the purchaser according to a procedure provided for by these Regulations;

State Funds

Funds from the State Budget of Ukraine, local funds, state non- budgetary funds and state credit supplies;

Bidder

A business entity (resident or non-resident), which confirmed its intention to participate in the procurement procedure or submits or plans to submit a bid;

Goods

Products of any kind and for any purposes, including raw material, articles, equipment, technologies, solid, liquid and gas products (including electrical power), and also services related to the supply of goods, if only the cost of these services does not exceed the cost of goods to be procured;

Works

Any activity related to designing, constructing new production and non-production facilities, their expansion, reconstruction, capital repair and renovation, technical re-equipment of operating enterprises, as well as accompanying services such as geodesic works, drilling, seismic surveys, air

and satellite photography, etc., if the cost of these services does not exceed the cost of construction itself;

Services

Any procurable activity other than goods and works, including training of specialists, transportation and communication services, application of technologies, scientific research, medical and public services, as well as other related activity;

Bidding documents

Documents prepared by purchaser and handed over to bidder for preparation of bid;

Bidding Committee

A group of experts appointed by the purchaser and responsible for performing procurement procedure according to these Regulations;

Bid

A procurement proposal prepared and submitted by the bidder to the purchaser in accordance with the relevant bidding documents' requirements;

Alternative bid

A proposal, submitted additionally to the bid along with the bidding documents, if it is provided for by the procedure for procurement, and different from the proposal prepared in accordance with bidding documents' requirements;

Bid acceptance

Acceptance of the bid by the purchaser, and his consent to the payment for it. The bid is considered accepted if within a term stipulated in the bidding documents the purchaser sends no written refusal to the winner;

Procurement agreement

A Contract of purchase between the purchaser and the bidder-the winning tenderer-for procurement of goods, works and services;

Bid security

Guarantees provided by the bidder to the purchaser for executing the bid, including bank guarantees, reserve letters of credit, bank bills under which bank has primary responsibility as well as cash deposits, transfer and promissory notes;

Performance security

Guarantees provided by the bidder to the purchaser for executing the procurement agreement, including bank guarantees, reserve letters of credit, bank bills, under which bank has primary responsibility, as well as cash deposits, transfer and promissory notes;

3. These Regulations shall be applied to procurement of all goods, works and services funded by the state but to procurement related to state secret and national defense and security.

Procedure for procurements related to security and national defense shall be stipulated in other legal and normative acts.

4. When procurement deals with the purchase of agriculture product or food product (defined in separate list), the purchaser has the right to procure the purchases on the commodity exchange market. The procedure for procurement on the commodity exchange market and the list of agriculture and food products shall be specified in other legal and normative acts.

5. The purchaser has no right to divide the procurement into parts in order to avoid the application of the procedures provided by these Regulations .

6. In case of several purchasers, the Cabinet of Ministers of Ukraine shall appoint one of them to be responsible for the procurement on behalf of all interested parties.

7. The Cabinet of Ministers of Ukraine shall appoint a Central Executive Body responsible for procurement of goods, works and services (hereinafter the authorized body) within the authorities assigned by these Regulations.

8. The key functions of the authorized body are the following:

- approval of methods of procurement other than open bidding as stipulated in paragraph 2, point 26 of these Regulations;
- development of draft normative and legal acts on procurement procedures;
- keeping records on procurements performed as well as on the ones being planned;
- submission of reports to the Cabinet of Ministers of Ukraine on procurement performance ;
- consideration and drawing conclusions on any matter of dispute, if it arises before the signing of the contract;
- provision of consultative and methodological service to the purchasers on procurement procedures, including training and advanced training, sample documents, and other relevant information on procurement procedures;
- circulation of information on performance of procurement system, including on changes in procurement legislation by publishing them in the press and in the “Government Procurement News”
- publishing” Government Procurement News “

9. The authorized body shall have the right to:

- submit proposals to the Cabinet of Ministers of Ukraine as to determining the purchaser to be responsible for observing procurement procedures as stipulated in point 6 of these Regulations;
- require reports from purchasers on performance procurement procedure results and on procurement contract’s implementation;
- set up terms for purchaser’s submission of information related to anticipated procurements, signed contracts and their execution;
- enforce measures pursuant to point 134 of these Regulations, if violations of procurement legislation are revealed.

10. Announcements on planned procurements or on procedure for bidders’ preliminary qualification shall be published in “ New on government procurement” published by the authorized

body, or in the press, and if necessary in international publications pursuant to point 12 of this Provision.

11. The procurement procedure should not come into effect before announcement is published in "Government Procurement News" except in the cases stipulated in point 30 of these Regulations;

12. Announcements on planned procurements or preliminary qualification procedure are subject to mandatory publication in official international publications, if the anticipated cost exceeds:

- 200 000 Euro for goods;
- 300 000 Euro for services;
- 4 000 000 Euro for works.

13. Only written announcements and notices shall be considered valid.

14. If the parties used to practice other form of information exchange in the bidding process, the contents of such exchange should be certified in writing.

15. If an international agreement concluded by Ukraine, and which is obligatory by consent of the Supreme Rada, provides for other rules than the ones stipulated in these Regulations then the rules of international agreement shall be applied.

16. The domestic and foreign bidders shall participate in the bidding procedure having equal rights according to these Regulations except in cases mentioned in points 17-19 of these Regulations.

17. In case when there is a sufficient number of qualified domestic bidders of goods, works and services (subjects of procurement), within the territory of Ukraine, or the subject of procurement is included in the list of goods produced in fair quantities within the territory of Ukraine, then the purchaser can include only domestic bidders in the procurement procedure if the anticipated cost of object of procurement exceeds:

- 200 000 Euro for goods;
- 300 000 Euro for services;
- 4 000 000 Euro for works.

18. The purchaser can apply a preference adjustment to the bid price offered by domestic bidder during evaluation and comparison of bids.

The preference adjustment rate shall not exceed 15 % of the bid price and shall be notified in the bidding documents and in the report on procurement performance.

19. If procurable services or works are done within the territory of Ukraine, then the purchaser can grant the right to domestic bidders to perform all works and services by using domestic raw materials and labor.

20. In the announcement on the procurement procedure execution the purchaser should inform the bidders about the application of measures stipulated in points 17-19 of these Regulations. The purchaser's decision on application of such measures is not subject to any changes till the end of bidding procedure.

21. The list of goods produced in fair quantities within the territory of Ukraine, specific preference adjustment rates, and procedures for application of restrictions, stipulated in points 17-19 of these Regulations, shall be defined in other resolutions of the Cabinet of Ministers of Ukraine.

22. The bidder may be refused to participate in the bidding when:
- without sound reasons he failed to fulfill at least one procurement agreement during the last five years prior to the bidding opening
 - he is acknowledged to be a bankrupt or a bankruptcy case is filed against him;

The purchaser has the information on the fact that:

- the bidder as a physical person was convicted of crime committed during the bidding procedure, or any other crime committed to obtain illegal material benefits, and convictions against him have not been remitted in due order;
- the bidder's official responsible for procurement procedure performance was convicted of crime related to infringement of procurement procedure or other crime committed to obtain lucre, and convictions have not been remitted in due order;
- reasons for refusal shall be notified in the report and be announced to the interested bidder within a week term.

23. Bidder's or bidder's representative's close relatives who have the status of legal persons or a natural person, who is a Bidder, can not act on the purchaser's behalf in the bidding procedure (can not discharge purchaser's duties), discharge expert's function on the observance of procurement procedure;

24. Subject to prior consent of the authorized body the purchaser is obliged to reject the bid, if the bidder proposes, gives or agrees to give directly or indirectly to any acting official or former official a reward in any form (employment, valuables, services, etc.) to influence the decision-making of the winner or the suitable to the bidder method of bidding.

25. The information on the rejection of the bid and the reasons therefor in case of the Bidder's disapproving actions pursuant to the Point 24 of these Regulations shall be notified by the purchaser in the report on the procurement procedure results and shall be announced within one week to the bidder who committed such actions .

26. Announcements on the bidding, invitation to the bidding, notifications on bidder's preliminary qualification procedure as well as other bidding documents shall be in Ukrainian and in one of the foreign languages used in international trade, if the procurement procedure is not limited to the domestic bidders pursuant to the points 17-19 of these Regulations. Both texts shall be authentic and of the same validity.

27. Bids shall be submitted in language (languages) specified by the purchasers in the bidding documents.

Section 2: General conditions of procurement

28. The pattern and the volume of procurement of goods, works and services for the state needs financed by the state budget and by local credit supplies shall be defined pursuant to the procedure specified by the Cabinet of Ministers of Ukraine, and if financed by the local budgets- according to the procedure defined by the local executive bodies and local administrations.

29. The procurement can be performed through the following procedures:

- open bidding;
- qualified participation bidding;
- two stage bidding;

- price bidding (quotation);
- procurement from one bidder.

The main procedure for procurement shall be an open bidding.

30. While conducting procurement with an expected value not exceeding the equivalent amount of 15,000 ECU (for works it is the amount of 50,000 ECU), it is not obligatory to use the open bidding procedures, and norms of these Provisions on obligatory publication of notification on procurement performed in "Government Procurement News" and on submission of report on the results of performed procurement procedure .

The use of procurement methods other than open bidding or qualified participation bidding with an expected value exceeding 200,000 ECU requires agreement and concordance with an authorized body.

31. Purchaser may require from bidder the submission of information on its conformity and compliance with the following qualification requirements:

- availability of necessary knowledge and experience, financial resources, equipment and qualified labor;
- availability of respective permission or license to execute certain works or render certain services;
- payment of all taxes and charges (obligatory payments) stipulated in the legislation of Ukraine;
- right to perform respective activities in compliance with bidder's statutory provisions;
- other requirements set by the legislation of Ukraine and paragraph 22 of these Regulations.

32. Qualification requirements stipulated by paragraph 31 of these Regulations are mentioned in documentation needed for conducting the procedure on pre-qualification of bidders (if such a procedure is applied), tender documentation or other documents related to submission of bids.

33. Purchaser shall not impose discriminative requirements to bidders, except for the cases stipulated in paragraphs 17 through 19 of these Regulations.

34. The Purchaser shall reject the bid of the Bidder regarding its participation in bidding at any stage, if:

- Bidder deliberately provides invalid or falsified information for qualification check-up;
- Bidder does not meet qualification criteria.

35. Prior to announcement on bids or invitation to bids the Purchaser may provide pre-qualification checking procedure of bidders.

36. Information on pre-qualification procedure shall be published in "News on Government Procurements", in foreign press (if necessary) as stipulated in paragraph 12 of these Regulations. Information shall be also sent to potential bidders not later than 45 days prior to bidding or invitation to bids. Should need arise this term may be reduced to 30 days, however, the reasons thereof should be substantiated in report on the results of performed procurement procedure.

37. Information on pre-qualification procedure shall contain the following data:
- Purchaser's name and address;
 - description, quantity and destination of goods, or description and place of works to be done, or description and place of services to be rendered;
 - term of delivery for goods, execution of works and rendering of services;
 - definition of requirements which bidders should comply with;
 - location and deadline for applications submission for pre-qualification procedure;
38. The Purchaser shall send pre-qualification documents to the interested parties not later than 14 days before the deadline for applications submission. The documents shall contain information stipulated in paragraph 37 of these Regulations, as well as:
- instructions on preparation and submission of requests to participate in pre-qualification of bidders procedure;
 - brief listing of bid evaluation criteria and qualification requirements on bidder's conformity;
 - information on documents to be provided by the Bidder to confirm the compliance with the requirements;
 - names, positions of people authorized by purchaser to perform this procedure, and means of contact with them.
39. Purchaser carries out selection of bidders for further participation in procurement procedures exclusively on the basis of requirements stated in paragraphs 37 and 38 of these Regulations.
40. Only those Bidders who passed the pre-qualification examination are eligible for further bidding.
41. Purchaser not later than in three days notifies each bidder who has participated in pre-qualification procedure about its results. The list of bidders allowed to participate in the further phases of procurement procedure is to be published in "Government Procurement News".
42. Information on the basis of which purchaser prepares report on the results of procurement procedure performed and which should be kept by purchaser during three years should contain the following data:
- brief description of procurement articles;
 - date of publication of notification on conducting procurement procedure, conducting pre-qualification procedure in "Government Procurement News", and if notification was published in other press (including international) - their names and dates of issues where notification was published;
 - business name and address of bidders who submitted bids, applications for participation in pre-qualification procedure, and name and address of the bidder whom the procurement agreement was signed with, as well as the price stated in this agreement;
 - price and brief description of other main conditions of each tender bid and procurement agreement, as well as additional conditions proposed by bidders;
 - brief listing of comparison criteria, bid evaluation criteria and criteria for selecting the winning tenderer;
 - substantiation of reasons for rejection of certain bids or all bids, if any;
 - reasons and circumstances the purchaser was guided by when choosing a method other than open bidding, giving the reasoning for selecting that particular tender mechanism;
 - brief description of any questions as to the pre-qualification procedures or bidding documents, and respective answers thereto, as well as any amendments made to these documents
 - a decision containing the reasons for not concluding the procurement agreement during bidding

- if restrictions for participation in bidding procedures were used in compliance with paragraphs 17 through 19 of these Regulations - substantiation for such restriction;
- if bidder was refused to participate in procurement procedure or his/her bid was rejected in accordance to paragraphs 22 and 24 of these Regulations - justification for such decision; data on:
 - qualification of those bidders who submitted their bids, applications for participation in pre-qualification procedure, or entry as to the absence of such data;
 - reasons for application of pre-qualification procedure to the bidders;
 - filed appeals, claims, and results of their review;
 - discontinuation of procurement procedure;
 - establishment of bidding committee.

43. Information stipulated in the second paragraph in paragraph 42 of these Regulations is to be provided upon request of any person after bid acceptance or completion of bidding, if no procurement agreement is concluded.

44. Information stipulated by third through seventh, ninth, tenth paragraphs of paragraph 42 of these Regulations, if it is not confidential, is to be provided upon request of bidders who submitted their bids or applications for participation in pre-qualification procedure, after bid acceptance or completion of bidding, if no procurement agreement is concluded.

45. Information, the submission of which does not contradict laws, contain state interests, legitimate commercial interests of the parties or violate principles of fair competitiveness, and information regarding reviewing, evaluation and comparison of bids, except for the one mentioned in the eighth paragraph of paragraph 42 of these Regulations, and except for the cases when it is required by the court or arbitration court decision, can not be disclosed by the Bidding Committee.

46. Authorized body should define:

- form of report on the results of performed procurement procedure;
- additional requirements to report on the results of performed procurement procedure;
- procedure on establishing and functioning of tender committees

Section 3: Open Bidding and Qualified Participation Bidding Procedures

47. The bidding is conducted by purchaser in order to choose the most advantageous bid on procurement of goods, works or services.

48. All interested bidders have the right to submit bids during open bidding process except for those who passed the selection according to the results of pre-qualification of bidders procedure.

49. During qualified participation bidding, only those bidders who have received invitations to bidders from purchaser have the right to submit bids.

50. The qualified participation bidding procedure is used in cases when:

- works or services complicated or specialized by nature can be performed or rendered by a restricted number of bidders;
- time and expenses needed for evaluation of a great number of bids are not compatible to the value of works, goods or services to be purchased;
- there were submitted no bids during open bidding or the open bidding failed to bring the expected results;
- the procurement is to be performed in a restricted period of time.

51. During qualified participation bidding, purchaser invites a number of bidders (not less than three) for bidding participation that can provide a choice for the most advantageous bid, and competition.

52. Purchaser invites potential bidders to an open bidding by issuing an invitation to bidders in accordance with paragraphs 10-12 of these Regulations.

53. An invitation to open bidding must include:

- business name and legal address of purchaser;
- type, quantity and shipment destination of goods or type and location of works performance or services rendering;
- term of delivery of goods, works performance or services rendering;
- information on requirements that bidders should meet;
- application for the use of domestic market protection conditions in accordance with paragraphs 17-19 of these Regulations;
- methods and place of receiving the bidding documentation and the amount of fee for obtaining this documentation (if such fee is set by purchaser);
- place and term of submitting of bidding documents;
- place and date of opening of bids.

54. The information stipulated by the second through seventh paragraphs of paragraph 53 of these Regulations must be included in invitations to bidders for the qualified participation bidding.

55. The authorized body through its decision determines:

- form or example of bidding announcement and invitation to bidders;
- additional information placed in the announcement and invitation.

56. The deadline for submitting bids set by purchaser has to be sufficient for their due preparation but not less than 45 calendar days from the date stated in bidding notification and in invitation to bidders. In case of urgent need, the minimum term can be shortened to 15 calendar days; if so the circumstances which led to this shortening are not to be caused by purchaser's actions aimed at weakening competition between bidders. The causes of term modification are stated in the bid evaluation report.

57. Purchaser sends bidding documents to bidder at least one week as of the day when he/she received the request for the needed documentation from bidder.

58. In case when the qualified participation bidding for procurement of goods and services is conducted, the bidding documents are sent together with invitations for bidders.

59. Purchaser has the right to require some fee for provision of the bidding documents; the fee should not exceed the sum needed for covering expenses for preparation of such documents and their mailing.

60. In case when the bidding for procurement of goods and services is conducted, the bidding documentation is sent after bidder has paid the fee for its preparation and mailing, in accordance with paragraph 59 of these Regulations.

61. In case when a pre-qualification procedure takes place, the bidding documentation is sent to all bidders who had passed the selection based on its results.

62. The bidding documentation should contain:

- instructions on bids preparation;

- list of criteria required by tender committee for evaluation of bidders' conformity to the established qualification requirements;
- information on the necessity of documented confirmation of bidders' conformity to the established qualification requirements;
- information on nature of procurement article as well as its necessary technical and quality characteristics, including the respective technical specification, plans, blueprints, drawings prepared in accordance with paragraphs 63 and 64 of these Regulations, as well as data on:
 - quantity of goods;
 - place where works have to be performed or services rendered;
 - additional services that have to be rendered;
 - term of goods delivery, works performance, services rendering;
- list of all criteria for determining the most advantageous bid;
- definition of main terms and conditions that will be mandatory included to procurement agreement or draft procurement agreement;
- description of separate part or parts of procurement article that can be subject of submitted bids in case when bidders are allowed to submit bids only on parts of goods, works or services procured;
- the evaluation and comparison method for alternative bids in case when purchaser accepts the possibility of submission of such bids;
- methodology of bid price calculation with indication of whether it has to include other elements besides the value of goods, works or services; for example transportation expenses, insurance, loading, unloading, customs duty and tax payments;
- information on currency (currencies) in which the bid price has to be calculated and stated; indication of language (languages) in which a bid has to be written;
- Purchaser's requirements on submission conditions for bid validity bonds and procurement agreement execution guarantees;
- conditions and terms for returning or non-returning of the bid validity bond;
- indication of method, place and deadline for submission of bids;
- information on procedure of provision of explanations and interpretations concerning bidding documents, as well as notification about purchaser's intentions to conduct a meeting with bidders;
- indication of term during which bids are considered valid;
- indication of place, date and time of bids opening;
- indication of name, title and address of one or several officials or other purchaser's employees authorized to provide communication with bidders and receive from them without mediators notifications connected with bidding procedures;
- information on additional conditions necessary for bid accepting and coming into effect of the procurement agreement.

63. The technical specification, plans, blueprints, drawings or descriptions of the procurement article required by purchaser should contain:

- detailed description of goods, works, services procured stating objective technical and quality characteristics;
- performance requirements of procurement article in case of impossibility to make a description or expediency of such performance requirements;
- references to standard characteristics of goods, works, services procured, as well as requirements, symbolic indicators and their terminology using international or approved in due order national standards and construction norms;

64. Technical specification should avoid references to specific trade mark or company, patent, construction or type of procurement article, its source of origin or manufacturer. When such reference is necessary, specification should include the expression "or equivalent."

65. For specific types of procurement the authorized body through its normative act has the right to establish additional requirements concerning information necessary to be included into the bidding documentation.

66. Bidder has the right to address purchaser with request for explanations and interpretations concerning the bidding documentation. Purchaser has to answer bidder's request not later than three days prior to termination of the bids submission period.

67. Not later than three days prior to termination of the bids submission period, purchaser has the right to introduce changes into bidding documentation on his/her own initiative or complying with bidders' requests and notify in a written form about the mentioned changes all bidders whom he/she sent documentation.

68. If purchaser conducts a meeting aimed at explaining and interpreting any requests concerning bidding documentation, he/she has to take minutes of this meeting stating all explanations and interpretations of requests concerning bidding documentation (not disclosing bidder who submitted the request) and to send it to all bidders whom he/she has sent the bidding documentation irrespective of their presence at the meeting.

69. If purchaser untimely submitted the explanations and interpretations of the contents of and changes to bidding documentation or if the changes introduced to the documentation are substantial, purchaser has to extend the period of bids submission. The decision on the extension of bids submission period is made by purchaser taking into account the fact that such period must be sufficient for bidders to acknowledge the mentioned changes, additions or explanations and timely submit their bids, but not less than three days.

70. A bid is submitted in a written form signed by bidder's authorized official in a sealed envelope or in other form stated in bidding documentation. When requested, purchaser confirms to bidder the receiving of his/her bid, stating the date and time of receiving.

71. A bid is always accompanied by a document confirming bidder's submission of bid security, if such submission is stipulated by bidding documentation.

72. Bids received by purchaser after the submission deadline are not opened and returned to bidders who submitted them.

73. Purchaser has the right before the termination of the established bids submission period to make a decision on its extension in case when one or more bidders cannot submit their bids before the established period because of objective circumstances. The notification on the extension of the period, possible changes of place and procedures of bids opening are immediately sent to all bidders whom purchaser has sent the bidding documentation.

74. Bids remain valid during the period stated in bidding documents. Before the termination of this period purchaser has the right to require from bidders the extension of bids validity for an additional specific period of time.

Bidder can:

- decline such requirement, while not losing his/her bid security;
- agree with the requirement and extend the validity term of his/her bid and bid security.

75. Bidders who do not extend validity terms of their bid securities are considered to have declined the requirement to extend the validity of their bids.

76. If not otherwise stipulated in bidding documents, bidder has the right to introduce changes or recall his/her bid before the termination of submission period without losing his/her bid security. Such changes or bid recall request can be credited in case when purchaser received them before the termination of bid submission period.

77. Purchaser must state in the bidding documentation requirements on providing bid security, its amount and form, as well as cases when bid security is not returned to bidder.

78. On purchaser's request, bidder provides bid security simultaneously with bid submission; the amount of security must not exceed one percent from the estimated value of procured works if the bidding for these works' procurement is to be conducted, and five percent from the estimated value of procured goods or services if the bidding for these goods' or services' procurement is to be conducted, based on the terms stated in bidding documents.

79. In case when bid security is deposited for bidder by another organization, bidder must coordinate this decision with purchaser before bid submission.

80. Bid security is not returned to bidder in case if one of the following occurs:

- recall or change of bid by bidder after submission deadline;
- non-signing of the procurement agreement by the bidding winner;
- non-provision by the bidding winner of the necessary guarantees on procurement agreement's fulfilment after accepting his/her bid, if provision of such guarantees is stipulated by the bidding documents.

81. Purchaser should not aspire to a bid security and has to return the corresponding amount to bidder over a period of ten calendar days from the day when the grounds for bid security returning accrue in any case but for the cases stated in paragraph 80 of these Regulations.

82. The grounds for returning bid security can be:

- termination of validity term of bid security stated in bidding documents;
- signing procurement agreement with bidder who won the bidding;
- bid's recalling before submission deadline if it is stipulated by bidding documents;
- termination of procurement procedures without signing procurement agreement with any of bidders who submitted bids.

83. During the procurement process purchaser has the right to require from bidder who won the bidding depositing during signing procurement agreement guarantees of its fulfilment.

84. The amount of agreement fulfilment guarantee shall not exceed 15 percent from the total value of procurement agreement during the process of procurement of goods and services and five percent in case of works procurement.

85. The opening of bids takes place not earlier than the termination of the submission period in location specified in bidding documents.

86. Purchaser shall admit to the procedure of bids opening all bidders who submitted bids or their authorized representatives.

87. Business name and address of each bidder who's bid is being opened, the price of each bid and bid evaluation criteria shall be announced by purchaser to the present bidder's representatives during bids opening, as well as in case of request notify bidders who submitted bids but were not represented at the time of opening. These data are stated in report on procurement procedure results.

88. Purchaser has the right to address to bidders for explanations and interpretations of contents of their bids aiming at easing their examination, evaluation and comparison.

89. Purchaser shall not start any negotiations with bidder on introducing changes to contents of the submitted bid including changes to its price or its adjustment.

90. Purchaser has the right to correct arithmetic mistakes found in a submitted bid if he/she gets permission from bidder in a written form to make such correction.

91. Purchaser selects tender winner on the grounds of bid evaluation criteria which stem from state interests and are mentioned in tender documentation. Such criteria may include:

- lowest price;
- shipment (performance) deadline;
- quality, esthetic and functional characteristics, ecological purity and cleanliness;
- follow-up maintenance;
- payment terms;
- possible economic advantages from accepting and implementing the bid, including domestic investments or other types of entrepreneurial activities;
- production costs pertaining the use of finished construction object;
- boosting population's employment;
- transfer of technologies and training of managerial, scientific and manufacturing personnel, including the use of local resources, like production means, workforce and materials for manufacturing goods, performing works, rendering services proposed by the bidder;
- provision to domestic executors of exclusive right on shipping of certain goods, works, services.

92. If other bid evaluation criteria but price are used to select the winner tender documentation should contain (if possible) their value equivalent or total ratio of these criteria in bid evaluation process.

93. Purchaser can demand from the bidder who won the tender to provide reaffirmation of his/her conformity with qualification requirements in compliance with paragraph 31 of these Regulations. If the bidder refuses to provide such reaffirmation purchaser rejects his/her bid and selects the winner from the remaining bids.

94. Purchaser can reject all bids and not accept the winning bid, if it was stipulated in tender documentation.

95. Taking into consideration paragraph 23 of these Regulations purchaser has the right to conduct bid evaluation by inviting respecting expert organizations or individual experts whose recommendations can be used while selecting the winner.

96. Information on reviewing, evaluation and comparison of bids is not provided to bidders or other persons who has not officially participated in procurement procedures, except for the cases when such information is demanded by authorized body to help review the complaint on performed procurement procedure which was submitted to this body.

97. Purchaser rejects a bid if:

- it fails to conform and comply with qualification requirements set in paragraph 31 of these Regulations and tender documentation;
- bidder who submitted the bid does not agree with the purchaser's correction of arithmetic mistake in compliance with paragraph 90 of these Regulations;

- bidder through his/her actions caused the accrual of circumstances mentioned in paragraph 24 of these Regulations.

98. The decision on conducting the bidding is abolished or the performed bidding is recognized as abortive if:

- less than three bids were submitted for participation in the bidding;
- all bids were rejected based on the requirement of paragraph 97 of these Regulations;
- price of the most favorable bid exceeds the amount earmarked by purchaser for financing the procurement;
- this procurement ceased to comply with state needs due to unforeseen objective circumstances.

99. In the notification on abolishing the decision on performed bidding purchaser informs the reasons which influenced his/her decision-making process.

100. The notification on abolishing the decision on performed bidding should be sent by purchaser to all bidders not later than three days after making such decision.

101. Purchaser accepts the bid which was selected and acknowledged as the best.

102. The notification on accepting the best bid should be sent to the bidder who submitted this bid during three days after the day when he/she was acknowledged as the bidding winner. In a week time after the bidding is over purchaser informs other bidders about bidding results through publication in "Government Procurement News" and reveals the business name and location of the bidder whose bid was selected as the best one.

103. Procurement agreement is signed in a week time with the bidder whose bid was accepted in compliance with the tender documentation requirements.

104. If the bidder whose bid was accepted refuses to sign the procurement agreement in compliance with the tender documentation requirements purchaser for the second time selects the best bid out of those whose validity has not expired yet, except for the cases when all bids were rejected in compliance with paragraph 94 of these Regulations.

105. The Cabinet of Ministers of Ukraine can introduce additional requirements on the procedure of signing a procurement agreement. Information on the need to comply with additional requirements is mentioned in tender documentation.

Section 4: Two Stage Bidding Procedure

106. Two stage bidding procedure is used when:

- purchaser is unable to comprise an exact list of goods, works or define type of services, as well as it is necessary to conduct preliminary negotiations with bidders in order to make optimal procurement decision;
- all bids submitted by bidders to tenders conducted through open bidding procedure were rejected by purchaser because of their clear indication on bidders' conspiracy or because they were submitted by bidders who failed to conform with requirements for participation in the bidding process stated in tender documentation, under the condition that bid requirements were not essentially changed before the moment when two stage bidding procedure executor was nominated;
- for new construction works which are similar to the construction works which conform with a model blueprint for which the primary procurement agreement was entered for in compliance

with provisions of Section 3 of these Regulations, under the condition that purchaser in his/her procurement notice regarding performance of primary construction works noted that for procurement of new similar construction works the two stage bidding process may be used;

- procurement articles include performance of scientific research, experiments or designs, rendering of consulting and other special services.

107. Two stage bidding procedure is conducted in two stages, and in this case:

- at the first stage all bidders are proposed to submit their preliminary bids without indicating the price. Bidding documentation in such a case stipulates the submission of bids on technical, qualitative and other characteristics of procurement articles, shipment conditions, and if need be - confirmation of professional and technical competence of bidders and their conformity with qualification requirements. Purchaser conducts negotiations with any bidder. After receiving preliminary bids Purchaser has the right to introduce certain changes into tender documentation regarding technical requirements and requirements for the quality of procurement article, or propose new bid evaluation criteria in compliance with these Regulations. Purchaser informs all bidders about changes introduced to tender documentation conditions while providing them with invitations to participate at the second stage of the bidding process;
- at the second stage purchaser makes a proposal to those bidders whose preliminary bids were not rejected at the first stage to submit final tender bids with price indication.

108. Bidders whose preliminary bids were not rejected at the first stage provide bid validity bonds before the beginning of the second stage, if it is stipulated in tender documentation.

109. After that the two-stage procurement procedure is conducted the same way as the open bidding procedure.

110. The notice on carrying out two-stage procurement procedure should contain:

- business name and legal address of purchaser;
- description of procurement article, including its necessary technical and other parameters, and if the procurement article is performance of works - then their type and approximate deadline for their performance;
- list of criteria used by purchaser to evaluate bids;
- date and location where preliminary bid was submitted.

111. Deadline for bidders' submission of preliminary bids is set by purchaser and is mentioned in tender documentation, but it could not be later than 30 days after publishing the notice on carrying out two stage bidding procedure

Section 5: Procedure for Requesting Price Bidding (Quotations) and Procurement from One Bidder

112. Purchaser can conduct procurement through the use of procedure for requesting price bidding (quotation) in case when goods, works or services are manufactured, performed or rendered not under exact specifications and under the condition that procurement value does not exceed value limit set in paragraph 29 of these Regulations.

113. While applying the procedure for requesting price bidding (quotation) purchaser submits price bid (quotation) request to at least three bidders.

114. Each bidder who received the request has to be informed whether products' value includes costs for transportation, insurance, customs fee, taxes and other duties (obligatory payments).

115. Each bidder has the right to submit only one price bidding. The bidding is submitted in sealed envelope not later than the deadline for submission set by purchaser.

116. Envelopes with bidding are opened at the time set by purchaser in the presence of at least three bidders out of those who submitted their bidding. Purchaser in a three day time informs all bidders who submitted their price bidding but failed to attend public opening of envelopes with quotations about the results of conducted procedure for requesting price bidding (quotation).

117. Purchaser makes a decision on signing procurement agreement with the bidder who submitted the lowest price bidding which satisfies the purchaser.

118. Procurement from one bidder is the procedure of conducting procurement applied by purchaser by way of signing procurement agreement after conducting negotiations with only one bidder.

119. Procurement from one bidder procedure is used by purchaser after appropriate correlation and agreement with authorized body only in cases of:

- procurement of works of art, services for water supply, heating, sluicing, medical and municipal service, services for training of experts; procurement pertaining exclusively protection of copyright, in particular patents; or if because of lack of competitiveness due to technical reasons goods, works or services can be shipped (performed, rendered) only by specific executor and there is no alternative to this;
- need in conducting by primary executor additional shipments aimed at partial changing or increasing the volume of shipment, when the change of executor may result in procuring equipment or services which would not comply the requirements, and if changed would not be compatible with the existing equipment or services;
- when additional construction works which were not included in original procurement agreement but were mentioned in tender documents are to be performed because of unforeseen circumstances in order to fulfill construction works mentioned in tender documents. Purchaser should enter into agreement on performing additional construction works with the executor of construction works mentioned in the original procurement agreement; at the same time the total value of all agreements on performance of additional construction works cannot exceed 50 percent of original procurement agreement value;
- entering into procurement agreement with the winner of architectural contest;
- when procurement can be conducted from only one bidder because of the need to protect domestic market in accordance to paragraphs 17 through 19 of these Regulations;
- procurement conducted at exceptionally favorable terms which are valid during very short period of time in case unexpected bids on procuring goods, works and services were accepted from bidders, or in case of procuring property from enterprises under liquidation process, or while transferring property into management under bidding terms;
- accrual of urgent need in conducting procurement because of certain economic or social circumstances which could not be foreseen by purchaser.

Section 6: Procurement Agreement

120. Procurement agreement comes into force after it is signed by purchaser and the bidder who was nominated as the winner of tender procedures.

121. Procurement agreement is entered only in written form and in compliance with the provisions of the Civil Code of Ukrainian Soviet Socialist Republic.

122. The copy of signed procurement agreement in a week time after it is been signed is submitted to the authorized body.

123. It is forbidden to introduce any changes to any part of the signed Procurement Agreement or propose any new conditions or terms which could change the essence of the bid which was used as the grounds for bid selection, if the need for such changes has not accrued because of the circumstances which it was impossible to foresee while signing the procurement agreement. If it happened, then paragraphs 124 through 128 of these Regulations should be used.

124. If circumstances which it was impossible to foresee while signing the procurement agreement accrued, and if they resulted in the change of the whole setup in such a way that the procurement no longer comply with government interests, purchaser can introduce changes to any part of the signed procurement agreement or refuse to implement the procurement agreement during one month after such circumstances accrued, under concordance and agreement with the authorized body.

125. If the purchaser's refusal to implement the provisions of the procurement agreement was caused by the circumstances stipulated by paragraph 124 of these Regulations, purchaser is obliged to pay for the actually executed part of the procurement agreement.

126. If there are any conflicts regarding the procurement agreement's execution, bidder is obliged to present his/her claims in a written form and send them to the purchaser.

127. Purchaser is obliged to review any claims presented by bidder, and provide bidder with reply within the time-frame set in the legislation.

128. If purchaser refuses to satisfy bidder's demands or fails to provide reply on the substance of the claim, bidder has the right to go to the court of arbitration court in compliance with the legislation.

Section 7: Procedure for appealing

129. Any bidder who believes that he/she accrued or may accrue losses because of purchaser's violation of procurement terms and conditions stipulated by these Regulations has the right to appeal purchaser's actions.

130. The appeal's matter can not deal with:

- selection of procurement procedure;
- restrictions on the participation in procurement procedure related to the purchaser's application of paragraphs 17 through 19 of these Regulations;
- Purchaser's decision to reject all bids.

131. Until the procurement agreement is signed any appeals on purchaser's violation of procurement procedures or on his/her decisions, actions or lack of actions are submitted by bidders who participate in procurement procedures to purchaser or authorized body. This authorized body informs purchaser about the appeal right after receiving it.

132. Purchaser or authorized body may not review the appeal if it was submitted later than 15 calendar days after accrual of grounds for submitting it.

133. Submission of appeal in compliance with paragraph 131 of these Regulations discontinues bidding under the condition that the appeal is not groundless and confirms that bidder will accrue losses if the bidding is not discontinued, as well as that discontinuation of bidding will not result in

substantial losses for purchaser. The total duration of discontinuation can not exceed 15 calendar days.

134. Not later than in three days after receiving appeal purchaser or authorized body should inform all those bidders whom this appeal concerns that the appeal was submitted, as well as inform about its contents, time and location where it will be reviewed. While reviewing appeal any bidder or government body interested in reviewing the bidding results has the right to take part in it. The bidder who failed to attend the reviewing of the bidding results forfeits to further submit any demands similar to those reviewed.

135. Discontinuation of bidding stipulated in paragraph 133 of these Regulations does not happen if purchaser confirms that taking into account urgent government interests the bidding needs to be continued. Any decision made by purchaser in compliance with this paragraph, as well as respecting substantiation of the decision-making process, should be incorporated into the report on the results of performed tender.

136. If the appeal matter is not settled through negotiations on the basis of mutual beneficence purchaser or authorized body during 15 calendar days after receiving it has to make a grounded decision which should mention:

- if the appeal was not satisfied - reasons for such decision;
- if the appeal was satisfied to the full extent or partially - measures to be used in order to settle the conflict.

If the appeal is reviewed by purchaser the copy of the mentioned decision is sent to the authorized body.

137. If bidder's appeal reveals substantial violations of the procurement process and bidding procedures which affect the level of objectivity while selecting the tender winner or result in discrimination of other bidders the authorized body has the right to invalidate the results of such bidding.

The authorized body's decision on invalidating the bidding results is mandatory both for purchaser and bidder, and it can be used as the basis for going to the court or arbitration court for reimbursement of costs for participating in the bidding. Costs reimbursement is conducted by purchaser and bidder on the grounds of the decision made by the court or arbitration court.

138. The decision of purchaser or authorized body comes into force as of the day it was made, and its copy is sent in a five day time to the bidder who submitted the appeal.

139. Purchasers and bidders bear administrative and criminal responsibility in compliance with the legislation for violation of the conditions and terms set by these Regulations and normative and legal acts which were prepared for its execution.

140. The control over execution of these Regulations is carried out by the Cabinet of Ministers of Ukraine which also provides its official interpretations and explanations.

Head of Administration of the
President of Ukraine

M. BILOPOLOTSKY
