

On definition of a special procedure for public procurement

Unofficial translation

Resolution of the Government of the Republic of Kazakhstan dated March 20, 2020 № 127.
The resolution is valid until December 31, 2020.

Unofficial translation

The resolution shall be valid until 31.12.2020 in accordance with paragraph 3 of this resolution.

In accordance with paragraph 1, subparagraph 4) of the Decree of the President of the Republic of Kazakhstan № 287 dated March 16, 2020 “On further measures to stabilize the economy” the Government of the Republic of Kazakhstan **hereby RESOLVED as follows:**

1. To approve the attached special procedure for public procurement.

2. The Ministry of Finance of the Republic of Kazakhstan, jointly with state bodies directly subordinate and accountable to the President of the Republic of Kazakhstan (by agreement), central state and local executive bodies, shall take measures arising from this resolution.

3. This resolution shall enter into force from the date of its signing and shall be valid until December 31, 2020 inclusive, and be subject to official publication.

Footnote. Paragraph 3 - in wording of the resolution of the Government of the RK dated 16.07.2020 № 448 (shall enter into force from 01.08.2020).

*Prime Minister
of the Republic of Kazakhstan*

A. Mamin

Approved
by resolution of the Government
of the Republic of Kazakhstan
dated March 20, 2020 № 127

Special procedure for public procurement

Footnote. Special procedure in wording of the resolution of the Government of the RK dated 16.10.2020 № 667 (shall enter into force from the date of its official publication).

1. General provisions

1. This special procedure for public procurement (hereinafter referred to as the procedure) has been developed in accordance with paragraph 1; subparagraph 4) of the Decree of the President of the Republic of Kazakhstan № 287 dated March 16, 2020 “On further measures to stabilize the economy” and shall define a special procedure for public procurement during crisis situations.

Other relations not regulated by this procedure shall be regulated in accordance with the legislation of the Republic of Kazakhstan.

2. The concepts used in this procedure shall be applied in accordance with the current legislation on public procurement and with other current legislation of the Republic of Kazakhstan.

3. Public procurement with special procedures shall be carried out during crisis situations in the following cases:

1) purchase of goods, works, services, including goods, services of the state material reserve, determined by the Interdepartmental Commission on Public Procurement, created by order of the Prime Minister of the Republic of Kazakhstan (hereinafter referred to as the Commission);

2) purchase of goods, works, services from potential suppliers identified by the Commission, including within the framework of implementation of budget investment projects;

3) acquisition of goods from domestic producers on the basis of information provided by the authorized body in the field of development of local content.

4. Public procurement planning shall be carried out in accordance with the legislation on public procurement, with the exception of public procurement provided for in section 3 of this procedure.

At the same time, the requirements of the legislation on public procurement, providing for restrictions on the number of amendments to the annual plan of public procurement, shall not apply to purchases provided for in this procedure.

The application of the preliminary annual plan of public procurement for 2021 shall not be allowed under this procedure.

5. Public procurement using special procedures shall be carried out in one of the following ways:

1) request for price proposals;

2) from a single source;

3) from the tender.

The customer shall determine the method of public procurement in accordance with this procedure.

At the same time, in the case provided for in part one, subparagraph 3) of this paragraph, the customer shall have the right to independently decide on the implementation of public procurement by means of a tender in accordance with this procedure or Article 13 of the Law of the Republic of Kazakhstan dated December 4, 2015 "On public procurement" (hereinafter referred to as the Law).

6. The list of potential suppliers - domestic producers and goods manufactured by them, shall be determined by the authorized body in the field of development of local content for public procurement in the way of requesting price proposals.

7. The Commission, including on the proposals of state bodies directly subordinate and accountable to the President of the Republic of Kazakhstan, central state and local executive bodies, shall determine the following:

1) criteria for goods, works, services and (or) a list of goods, works, services, the procurement of which shall be carried out by means of a single source;

2) criteria for potential suppliers and (or) potential suppliers from which customers shall purchase goods, works, services in a single-source manner, including as part of the implementation of budget investment projects.

At the same time, the determination of potential suppliers for public procurement within the framework of the implementation of budget investment projects, the amount of which shall exceed seven hundred and fifty thousand times the amount of the monthly calculation indicator established for the corresponding financial year by the law on the republican budget, shall be carried out by the Commission in agreement with the President and the Prime Minister of the Republic of Kazakhstan;

3) criteria for works and services and (or) a list of works and services for which public procurement shall be carried out by way of tender.

8. Lists of goods, works, services stipulated by paragraphs 6 and 7 of this Procedure shall be published on the web portal of public procurement (hereinafter referred to as the web portal).

9. A prospective supplier shall not be entitled to participate in public procurement in the event of restrictions imposed by Article 6 of the Law.

10. In cases where potential suppliers identified by the winners avoid entering into a public procurement contract or failure or inadequate performance by the supplier of contractual obligations arising from the introduction of a state of emergency, the customer shall not take measures to include such potential suppliers or suppliers in the register of unscrupulous participants in the procurement and to impose penalties on them.

In cases of non-performance or improper performance of contractual obligations arising from the introduction of a state of emergency, the customer, after three working days from the date of notification of the supplier of these facts, has the right to unilaterally terminate the contract on public procurement.

Payment under public procurement contracts shall be made within a period not exceeding five working days inclusive, from the date of performance of obligations under this public procurement contract.

In relation, arising or being arisen in accordance with the current legislation on public procurement, customers shall, in accordance with the procedure established by legislation, take measures arising from this paragraph.

11. The requirements of Article 47 of the Law shall not apply to public procurement of goods, works and services purchased in accordance with this procedure, with the exception of

filing a complaint in the framework of an electronic state audit in accordance with the legislation of the Republic of Kazakhstan on state audit and financial control.

At the same time, actions (inaction), decisions of the customer, organizer of public procurement, single organizer of public procurement, single operator in the field of public procurement can be appealed in accordance with the legislation of the Republic of Kazakhstan.

2. Organization and conduct of public procurement by means of request for price proposals

12. Public procurement of goods provided for in paragraph 6 of this Procedure shall be carried out by means of request for price proposals from potential suppliers, determined by the authorized body in the field of local content development.

The requirement of this paragraph shall not apply to public procurement performed in accordance with section 3 of this procedure, as well as Article 39, paragraph 3 of the Law.

13. The Customer shall post the following information on public procurement on the web portal in Kazakh and Russian languages not later than three working days before the deadline for submission of price proposals:

- 1) quantity of goods, which shall be the subject of public procurement, with indication of allocated amounts;
- 2) a brief description of the purchased goods;
- 3) the place of delivery of the goods;
- 4) required delivery time of the goods;
- 5) start and end dates of submission of price proposals by potential suppliers;
- 6) draft contract on public procurement with indication of technical specification.

14. The prospective supplier shall submit only one price proposal containing the information specified in this procedure, which shall not be amended and/or added.

It is allowed for the prospective supplier to recall the submitted price proposal before the deadline for its submission. At the same time, it is allowed to resubmit the price proposal as amended before the deadline for its submission.

15. The submission of a price proposal by a potential supplier shall be a form of expressing its consent to deliver the goods in compliance with the conditions provided for in the draft contract on public procurement, including those related to the supply of goods to the administrative-territorial unit of the customer in the quarantine zone, as well as restrictions associated with the introduction of a state of emergency.

16. The prospective supplier's price proposal shall include all costs associated with the delivery of the item.

17. The price proposal shall be submitted by the prospective supplier through the web portal to the customer before the end of the deadline for acceptance of the price proposals specified in the announcement, in the form in accordance with Annex 2 to the Rules for public procurement approved by the authorized body in the field of public procurement (

hereinafter referred to as the Rules for public procurement), during the period from 9-00 to 18-00 in the city of Nur-Sultan.

18. The price proposal shall be accepted after the web portal automatically shall notify the prospective customer.

19. A prospective supplier's price proposal shall be automatically rejected by the web portal in the following cases:

- 1) if it exceeds the amount allocated for the purchase of the goods;
- 2) provided for in Article 6, paragraph 1, subparagraphs 1), 3), 4), 5), 6) and 8) of the Law

Automatic rejection of price proposals on other grounds shall not be allowed.

20. After the deadline for submitting price proposals, the web portal automatically shall compare price proposals and summarize the results of public procurement by requesting price proposals.

21. The winner shall be the prospective supplier who has offered the lowest price proposal

22. The prospective second-place supplier shall be determined based on the price following the lowest price proposal.

23. In case the lowest price proposal is submitted by several potential suppliers, the winner shall be the potential supplier whose price proposal has been received earlier than the quotation of other potential suppliers.

24. No negotiations may be held between the customer and the prospective supplier with respect to its price proposal by means of a web portal or by other means without the use of a web portal, except as provided in Article 45 of the Law.

25. If during the period of submission of price proposals only one price proposal of a potential supplier is submitted, including after the web portal automatically rejects price proposals on the grounds provided for in paragraph 19 of this procedure, such government purchases shall be automatically recognized as failed by the web portal, and the customer shall perform public procurement in a single-source manner from the potential supplier that submitted this price proposal. At the same time, the price of the concluded contract should not exceed the price proposal of a potential supplier.

26. If during the period of submission of price proposals no price proposal of potential suppliers is submitted, including after automatic rejection by the web portal of price proposals on the grounds provided for in paragraph 19 of this Procedure, such public procurement shall be automatically recognized by the web portal as failed, and the customer shall perform public procurement in the manner provided for by the law on public procurement.

27. The minute on the results of public procurement by requesting price proposals shall be automatically posted on the web portal after they have been summed up in accordance with Annex 3 to the Rules for public procurement.

28. The conclusion and execution of the contract on public procurement by means of the request for price proposals shall be carried out in accordance with the procedure and deadlines established by the legislation on public procurement.

At the same time, the requirement to provide provision for the application, the execution of the contract on public procurement and the advance payment shall not apply to public procurement by requesting price proposals.

When executing a contract on public procurement by requesting price proposals, the delivery of goods of foreign production is not allowed.

3. Implementation of public procurement by means of a single source

29. Public procurement by means of a single source shall be carried out in the following cases:

- 1) purchase of goods, works, services determined by the Commission;
- 2) purchase of goods, works, services from potential suppliers identified by the Commission, including within the framework of implementation of budget investment projects;
- 3) purchase of goods and services of the state material reserve determined by the Commission.

30. Public procurement by means of a single source shall be carried out taking into account the format and logic control established on the web portal.

In the case of public procurement within the framework of the implementation of budget investment projects, the amount of which exceeds seven hundred and fifty thousand times the monthly calculation figure established for the corresponding financial year by the law on the republican budget, the web portal of public procurement shall establish a requirement for potential suppliers to comply with financial stability in the manner determined by the Rules for the implementation of public procurement.

31. In implementation of public procurement by means of a single source, in the case provided for in paragraph 29, subparagraph 1) of this procedure, the purchaser shall identify the supplier in accordance with the principles of public procurement provided for in Article 4, subparagraphs 1) and 7) of the Law and enter into a contract for public procurement with it through a web portal.

32. In order to conclude a contract on public procurement, the customer shall send through a web portal to a potential supplier a signed (electronically digitally signed) draft contract on public procurement.

33. The draft contract on public procurement shall be signed (certified by electronic digital signature) by the prospective supplier no later than three working days from the date of its receipt through the web portal.

34. In the event that the prospective supplier has not signed (not certified by electronic digital signature) the draft contract on public procurement within the period specified in

paragraph 33 of this procedure, the customer may forward the draft contract on public procurement to another potential supplier.

35. In the event of technical failures on the web portal, confirmed by a single operator of public procurement, the requirements for concluding a contract for public procurement from single source through the web portal shall not be extended.

36. Execution of the contract on public procurement by means of a single source shall be carried out in accordance with the legislation of the Republic of Kazakhstan.

At the same time, the requirement to provide security for the execution of the contract on public procurement and advance payment shall not apply to public procurement by means of a single source.

37. The requirement of this section regarding the use of the web portal shall not apply to public procurement by means of a single source, the information about which constitutes state secrets in accordance with the legislation of the Republic of Kazakhstan on state secrets and (or) contains official information of limited distribution determined by the Government of the Republic of Kazakhstan.

4. Implementation of public procurement by means of a tender

38. Public procurement by means of a tender shall be carried out in case of purchase of works and services included in the list of works and services determined by the Commission.

39. Qualification requirements for potential suppliers shall be established in accordance with the legislation on public procurement, with the exception of Article 9, paragraph 1, subparagraph 5), of the Law.

At the same time, a qualification requirement in the form of financial stability of a potential supplier shall be imposed on potential suppliers in cases if the allocated amount of the tender (lot) exceeds twenty thousand times the monthly calculation indicator established for the corresponding financial year by the law on the republican budget, in the manner determined by the Rules for public procurement.

40. Consideration of applications for participation in the tender, evaluation and comparison of competitive price proposals of the participants, as well as determination of the winner of the tender shall be carried out for each lot provided for in the tender documentation.

Potential suppliers shall be involved in public procurement by means of a tender, determined by the results of the consideration of applications for participation in the tender in accordance with the qualification requirements and requirements of the tender documentation.

41. Tender documentation shall be developed in accordance with the requirements established by the legislation on public procurement.

At the same time, the procedures for preliminary discussion of the draft tender documentation and preliminary admission established by the Law shall not be applied in public procurement by means of the tender provided for in this procedure.

42. The tender documentation shall be approved by the first head of the customer either by the person performing his duties, or by the responsible secretary or other official exercising the powers of the responsible secretary, determined by the President of the Republic of Kazakhstan.

The tender documentation developed by a single organizer of public procurement shall be approved by the first head of a single organizer of public procurement or by the person acting.

The total number of members of the tender commission shall be an odd number, but not less than three people.

43. The organizer of public procurement, a single organizer of public procurement no later than one working day from the date of approval of the tender documentation shall be required to post on the public procurement web portal the text of the announcement of public procurement by means of the tender.

44. The deadline for submission by potential suppliers of applications for participation in the tender should be at least three working days from the date of placing an announcement on the public procurement web portal on the implementation of public procurement through the tender, as well as the text of the tender documentation.

In case of repeated public procurement by means of the tender, the organizer of public procurement at least one working day before the final date of submission of applications for participation in the tender is obliged to place on the web portal of public procurement the text of the announcement on the implementation of repeated public procurement by means of the tender, provided that the competitive documentation of the failed tender shall be unchanged, except for the extension of the contract for public procurement in connection with repeated public procurement.

In cases of repeated public procurement by means of the tender and amendments and/or additions to the tender documentation, public procurement shall be carried out in accordance with part one of this paragraph.

45. The application for participation in the competition shall be submitted in accordance with the requirements of the current legislation on public procurement.

At the same time, the requirement to introduce provision for the application shall not apply to purchases if the allocated amount of the tender (lot) exceeds twenty thousand times the monthly calculation indicator established for the corresponding financial year by the law on the republican budget.

Applications of potential suppliers shall be accepted from 9-00 to 18-00 in the city of Nur-Sultan.

An application for a potential supplier shall be subject to automatic rejection by the public procurement web portal in the following cases:

1) if a potential supplier has previously submitted an application for participation in this tender;

2) if an application for participation in the tender has entered the web portal of public procurement after the deadline for accepting applications for participation in this tender has expired;

3) if the tender price proposal exceeds the amount allocated for the purchase of these goods, works, services;

4) provided for in Article 6, paragraphs 1, subparagraphs 1), 3), 4), 5), 6) and 8) of the Law;

5) if the amount of concluded contracts for public procurement in the current year is twice the income (working capital) of a potential supplier for the last three years preceding the previous year, according to the data of information systems of state revenue bodies.

Potential suppliers applying for participation in the tender, after one working day from the date of placement of the minute on the results of public procurement by means of the tender, shall be provided with access to view applications for participation in this competition of other potential suppliers.

Submission by a potential supplier of an application for participation in the tender shall be a form of expressing his consent to perform work and provide services in accordance with the requirements and conditions of the tender documentation, including those related to the performance of work and the provision of services in the administrative-territorial unit of the customer located in the quarantine zone, as well as restrictions related to the introduction of a state of emergency.

46. Consideration of applications for participation in the tender shall be carried out by the tender commission in order to determine potential suppliers that meet the qualification requirements and requirements of the tender documentation.

47. Based on the results of the consideration of applications for participation in the tender for compliance of potential suppliers with the qualification requirements and the requirements of the tender documentation, a minute shall be drawn up on the results of public procurement by means of the tender, which shall be signed by the chairman and all members of the tender commission, as well as the secretary of the tender commission on the day of the decision on consideration of applications for participation in the tender.

48. The tender commission shall consider the application for participation in the tender as meeting the requirements of the tender documentation, if it contains grammatical or arithmetic errors that can be corrected without affecting the substance of the submitted application.

49. A prospective supplier may not be admitted to the competition (recognized as a participant) if:

1) he and (or) the subcontractor (co-contractor) involved by him shall be determined not to meet the qualification requirements on the grounds determined by the Law and the Rules for public procurement;

2) he violated the requirements of Article 6 of the Law;

3) his application for participation in the tender shall be determined not complying with the requirements and conditions of the tender documentation on the grounds determined by the legislation on public procurement, taking into account the features provided by this procedure.

50. If a potential supplier is not allowed to participate in the tender on the grounds provided for in paragraph 49, subparagraph 2) of this procedure, the minute on the results of public procurement by means of the tender shall indicate the justification for the rejection of the application for participation in the tender of such potential supplier with the indication of supporting information and documents that served as the basis for the rejection of the application for participation in the tender.

51. Based on the results of consideration of applications for participation in the tender, within two working days from the date of expiry of the deadline for potential suppliers to submit applications for participation in the tender, the tender commission shall determine potential suppliers that shall meet the qualification requirements and requirements of the tender documentation, and recognize the participants.

In case of qualification requirements in terms of availability of material and labor resources, the period of consideration of the application is five working days from the date of expiry of the deadline for submission of applications for participation in the competition by potential suppliers.

52. The tender documentation shall provide for a criterion affecting the tender quotation in the form of an indicator of taxes paid.

The determination and amount of the conditional discount for the existence of the above criterion shall be carried out in the manner determined by the Rules for public procurement.

53. The tender price proposals shall be opened automatically by the public procurement web portal based on the results of the consideration of the application for participation in the competition for compliance with the qualification requirements and requirements of the tender documentation.

54. The public procurement web portal automatically shall match participants' notional prices and determine the participants based on the lowest notional price.

The participant who has taken the second place based on the results of evaluation and comparison of conditional pricing proposals shall be determined on the basis of the price following the lowest conditional price.

The conditions for recognition of the winner (the bidder who took the second place based on the results of evaluation and comparison of competitive price proposals) with equal conditional prices are determined by the Rules for public procurement.

55. The minute on the results of public procurement by the tender method shall be automatically formed and posted by the web portal of public procurement with simultaneous notification by e-mail of all members of the tender commission and potential suppliers who have submitted applications for participation in the tender.

56. The minute on the results of public procurement by means of the tender shall contain the following information:

1) on potential suppliers whose applications for participation in the tender have been rejected, with a detailed description of the reasons for their rejection, including information and documents confirming their non-compliance with the qualification requirements and requirements of the tender documentation;

2) other information defined by the Rules for public procurement.

57. Public procurement by means of a tender shall be declared to have failed on one of the following grounds:

1) absence of submitted applications for participation in the tender;

2) submission of less than two applications for participation in the tender;

3) if no potential supplier is allowed to participate in the tender;

4) if one potential supplier is admitted to participate in the competition.

58. If public procurement by means of the tender is declared invalid, the customer shall make one of the following decisions:

1) on repeated public procurement by means of the tender;

2) on change of tender documentation and repeated conduct of public procurement by means of the tender;

3) on the implementation of public procurement by means of a single source in the cases provided for in paragraph 59 of this procedure.

59. If public procurement by means of the tender is recognized as invalid, the customer shall have the right to make public procurement by means of a single source in cases:

1) absence of submitted applications for participation in the tender (at the same time, a potential supplier to whom an invitation to participate in public procurement shall be sent by means of a single source is determined by the customer);

2) submission of less than two applications for participation in the tender (at the same time, an invitation to participate in public procurement by a single source shall be sent to a potential supplier who submitted an application for participation in the competition, as well as the price of the concluded contract on public procurement should not exceed the competitive price proposal of a potential supplier indicated in the application for participation in the tender).

Public procurement from a single source through failed tenders shall be carried out taking into account the format and logic control established on the public procurement web portal.

In the case provided for in subparagraph 1) and the refusal of a prospective supplier to enter into a single-source contract provided for in subparagraph 2) of this paragraph, the customer shall issue an invitation to participate in public procurement in a single-source manner to potential suppliers without requiring compliance with financial sustainability.

60. The conclusion and execution of the contract on public procurement by means of the tender shall be carried out in accordance with the procedure and time limits established by the legislation on public procurement.

At the same time, the requirement to provide provision for the execution of the contract on public procurement, advance payment, as well as the amount in accordance with Article 26 of the Law (if any) shall not apply to purchases if the allocated amount of the tender (lot) exceeds twenty thousand times the monthly calculation indicator established for the corresponding financial year by the law on the republican budget.