

**GOVERNMENT OF THE REPUBLIC OF ARMENIA**

**DECISION**

No 727-N of 19 May 2022

ON MAKING AMENDMENTS AND SUPPLEMENTS TO DECISION Nօ 526-N OF 4 MAY 2017 OF THE GOVERNMENT OF THE REPUBLIC OF ARMENIA

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Being guided by Article 33, part 1 of Article 34 of the Law “On regulatory legal acts” and Articles 2, 3, 4, 11, 15, 16, 17, 19 and 23 of the Law “On making supplements and amendments to the Law “On procurement”” HO-4-N of 21 January 2022, the Government of the Republic of Armenia hereby **decides**:

1. To make the following amendments and supplements to the procedure approved by sub-point 1 of point 1 of the Decision of the Government of the Republic of Armenia “On approving the procedure for organisation of the procurement process and repealing the Decision of the Government of the Republic of Armenia No 168-N of 10 February 2011” No 526-N of 4 May 2017:

(1) in point 21:

a. paragraph (e) of sub-point 1 shall be amended as follows:

“(e) and the required volume and the procurement price of the subject matter of procurement,”;

b. paragraph (b) of sub-point 2 shall be amended as follows:

“(b) on the basis of point 2 of part 6 of Article 15, and if there are planned financial resources not specified, as prescribed by law, for the given procurement, the procurement price to be planned for the acquisition of similar goods, works or services shall be also introduced in the bid;”;

(2) in point 23:

a. the word “seventy-fold” in sub-point 2 shall be replaced with the word “eighty-fold”;

b. in the 12th line of the list approved by sub-point 4, the words “those of communication services, safety devices and equipment, including their service” shall be added after the words “special technical and software devices and equipment”;

c. the word “thirty” in sub-point 5 shall be replaced with the word “eighty";

(3) point 29 shall be amended as follows:

“29. in case of declaring the procurement procedure as not having taken place, on the day of expiry of the standstill period, whereas in case of concluding a contract — on the following day, the commission shall be considered as dissolved.”;

(4) in point 32:

a. paragraph (c) of sub-point 1 shall be amended as follows:

“c. a statement confirmed by him or her in case of being declared a selected bidder, within the time limit prescribed by Article 35 of the Law, related to the obligation of submitting a qualification security. Qualification security shall not be submitted, where the selected bidder or the organisation producing the goods supplied by the selected bidder and acting as an official representative within the framework of the given procedure has, as of the day of opening the bids, the respective solvency rating granted by reputable international organisations (Fitch, Moodys, Standard & Poor՝s), at least in the amount of the sovereign rating granted to the Republic of Armenia. Where in the procurement bid the procurement price of goods, works or services to be procured within the framework of the given procedure:

- does not exceed the eighty-fold of the procurement base unit, the amount of the qualification security shall be equal to fifteen per cent of the procurement price, and in case of exceeding — to thirty per cent thereof;

- does not exceed the twenty-five-fold of the procurement base unit, the qualification security shall be submitted in the form of a unilaterally approved statement in the form of default penalty or cash, except for procurement of the services of development, expert examination and technical control of the design documents necessary for the implementation of construction projects, in case of which the security shall be submitted in the form of the guarantee or cash provided for by this paragraph;

- exceeds the twenty-five-fold of the procurement base unit, the qualification security shall be submitted in the form of bank guarantee or cash;

- is less than the price of the contract to be concluded, the amount of the qualification security shall be calculated against the contract price;”;

b. paragraph (e) of sub-point 1 shall be amended as follows:

“and in the cases provided for by the invitation — a security bid, the amount of which shall be equal to five per cent of the procurement price. Where the price proposal of the bidder exceeds the procurement price, the amount of the bid security shall be equal to five per cent of the price proposal. In case the procurement procedure is arranged in an electronic form, the bid security in the form of a bank guarantee shall be submitted in a printed (scanned) version of the original copy of the guarantee, provided that the original copy thereof shall, along with an accompanying letter, be submitted, by the bidder, to the evaluation commission before 17:00 in Yerevan time of the working day following the expiry of the deadline for submission of bids. The bid security shall be returned within five working days following the day of conclusion of the contract. In case of declaring the procurement procedure as not having taken place, the bid security shall be returned within five working days following the expiry of the standstill period, where the results of the procurement procedure are not appealed against.

In case of existence of an appeal, the bid security shall be returned within five working days following the date of entry into legal force of the final judicial act of the court on upholding the decision of the evaluation commission on declaring the procurement procedure as not having taken place.”;

c. in paragraph (g) of sub-point 1, the words “on the absence of unfair competition within the framework of the given procurement process” shall be added after the word “statement ” ;

d. sub-points 9 and 10 shall be amended as follows:

“(9) where in the procurement bid the price of the goods, works or services subject to procurement within the framework of this procedure does not exceed the twenty-five-fold of the procurement base unit, the bid security shall not be submitted, and the contract security shall be submitted as a unilateral statement in the form of penalty or cash. Moreover, the amount of the contract security shall comprise ten per cent of the procurement price of the goods, works and services provided for by the contract. Where the procurement price of the goods, works and services provided for by the contract is less than the price of the contract to be concluded, the amount of the contract security shall be calculated against the contract price. In case of procurement of the services of development, expert examination and technical control of the design documents necessary for the implementation of construction projects, the contract security shall be submitted in the form of bank guarantee or cash. Where the procurement price of the goods, works or services subject to procurement within the framework of this procedure exceeds the twenty-five-fold of the procurement base unit, both the bid security and the contract security shall be submitted in the form of bank guarantee or cash. Where the bidder has submitted the bid security in an amount exceeding the amount prescribed by paragraph (e) of sub-point 1 of this point, the bid shall be considered as complying with the requirements of the invitation and shall not be subject to rejection;

(10) where the procurement procedure has been arranged on the basis of part 6 of Article 15 of the Law, and no financial resources are prescribed at the time of arising of the competence to conclude a contract, the qualification security and contract security shall be submitted as a unilaterally approved statement in the form of default penalty or cash. Where the financial resources prescribed at the time of arising of the competence to conclude a contract exceed the twenty-five-fold of the procurement base unit, though additional financial resources are required for full implementation of the contract, the contract security and qualification security shall, in terms of the allocated financial resources, be submitted in the form of bank guarantee or cash, and in terms of the required financial resources — as a unilaterally approved statement in the form of default penalty or cash;”;

e. sub-points 15 and 24 shall be repealed;

f. paragraphs (a), (b) and (c) of sub-point 17 shall be amended as follows:

“a. the bidder submits the bid for more than one lot, he or she may submit either one bid security for each lot separately or one bid security for all lots. In case of submitting one bid security, its amount shall be calculated against the total sum of the procurement prices of the submitted lots, having regard to the requirements of paragraph (e) of sub-point 1 of this point;

b. the bidder is declared as selected in terms of more than one lot, he or she may submit one contract security and one qualification security either for each lot separately or one contract security and one qualification security for all lots. In case of submitting one contract security or one qualification security, its amount shall be calculated against the total sum of the procurement prices of the submitted lots, having regard to the requirements of paragraph (c) of sub-point 1 of this point and sub-point 9 of the same point;

c. the bidder is deprived of the right to conclude a contract in terms of any lot, the bid security shall be paid only in the amount of the security calculated against this lot;”;

g. sub-points 19, 20 and 21 shall be amended as follows:

“(19) where the confirmation by the bidder of the fact of his or her eligibility of participating in the procurement, provided for by the invitation, is qualified as not true, or the bidder fails to submit, in the manner and within time limits prescribed by the invitation, the documents provided for by the invitation, or the selected bidder fails to submit the qualification security or contract security, or the person having concluded the contract for the purpose of concluding the agreement fails to replace the qualification security or contract security submitted in the form of default penalty, this fact shall constitute violation of the obligation assumed within the framework of the procurement process;

(20) where the procurement procedure is arranged on the basis of part 6 of Article 15 of the Law, the bidder shall not submit a bid security;

(21) bids shall be evaluated within fifteen working days from the date of expiry of the deadline for the submission thereof. Where the number of lots of the procurement procedure exceeds seventy-five lots, the bids shall be evaluated within twenty working days from the date of expiry of the deadline for the submission thereof;”;

h. paragraph (b) of sub-point 26 shall be amended as follows:

“b. the case where the contract is executed by stages, and the execution of each stage is not directly interrelated with the final result to be achieved in accordance with the requirements prescribed by the contract. In case of application of this paragraph, upon accepting, by the contracting authority, of the result of each stage, the sum of the security shall be reduced in proportion to the amount calculated against the sum of this stage.

Moreover, where contracts for procurement of goods, works and services are concluded on the basis of part 6 of Article 15 of the Law, the qualification security submitted with regard to the agreement (agreements) concluded for the given year within the framework of existing financial allocations shall be subject to return in case the contract (contracts) are duly executed by the executor in full, and the result thereof is fully accepted by the contracting authority. In case the contract is rescinded unilaterally due to further non-execution thereof by the executor, the qualification security submitted for the non-implemented part of the contract shall be charged, in full, from the latter;”;

(5) in point 40:

a. the 1st sentence of sub-point 1 shall be amended as follows:

“the chairperson (person presiding the session) shall declare the session open and shall announce the procurement price specified in the procurement bid.”;

b. the 1st sentence of sub-point 4 shall be amended as follows:

“(4) the commission shall reject the bids which lack a price proposal and (or) a bid security, or where they were submitted in violation of the requirements of the invitation, except for the case provided for by point 41 of this Procedure.”;

c. in sub-point 5, the words “selected and successively ranked bidders” shall be replaced with the words “bidders selected and not recognised as such”, and the words “the price prescribed by the procurement bid” — with the words “the procurement price”;

d. in paragraph (a) of sub-points 5 and 6, respectively, the words “selected and successively ranked bidders” shall be replaced with the words “bidders selected and not recognised as such”;

e. in paragraph (b) of sub-points 5 and 6, respectively, the words “conditions, duration,” shall be added before the words “day, time, venue of conduct of negotiations”;

f. in paragraph (e) of sub-point 5, the words “the price prescribed by the procurement bid” shall be replaced with the words “the procurement price”, and in the same paragraph and paragraph (e) of sub-point 6, the words “selected and successively ranked bidders” shall be replaced with the words “bidders selected and not recognised as such”;

g. paragraph (f) of sub-point 5 shall be amended as follows:

“f. at the time of expiry of the deadline set for negotiations, where the prices submitted by the bidders present at negotiations exceed the procurement price, the evaluation commission may, in the result of negotiations, declare the bidder as having submitted the lowest price proposal as a selected bidder, provided that the rights and obligations of the parties to the contract being concluded with the selected bidder will take effect in case additional financial resources in the amount exceeding the procurement price are provided for, and an agreement is concluded between the parties based thereon. Moreover, the agreement shall be concluded within fifteen working days after additional financial resources are provided for, by extending the time limits for the supply of goods, performance of works or provision of services for a period between the day of concluding the contract and the day of concluding the agreement. The contract concluded under this paragraph shall be rescinded where no additional financial resources are provided for within sixty calendar days after the conclusion. The requirements of this paragraph shall not apply in case of the procedure for carrying out procurement through electronic auctions, as well as in the case where one bidder has submitted a bid, or a bid of only one bidder has been evaluated as complying with the requirements of the invitation;”;

h. in paragraph (g) of sub-points 5 and 6, respectively, the words “the price prescribed by the procurement bid” shall be replaced with the words “the procurement price”;

i. paragraph (f) of sub-point 6 shall be amended as follows:

“f. at the time of expiry of the deadline set for negotiations, the price of the bidder having received the highest score exceeds the procurement price, the evaluation commission may declare this bidder as a selected bidder, provided that the rights and obligations of the parties to the contract being concluded with the selected bidder will take effect in case additional financial resources in the amount exceeding the procurement price are provided for, and an agreement is concluded between the parties based thereon.

Moreover, the agreement shall be concluded within three working days after additional financial resources are provided for, by extending the time limit for provision of services for a period between the day of concluding the contract and the day of concluding the agreement. The contract concluded under this paragraph shall be rescinded where no additional financial resources are provided for within thirty calendar days after the conclusion. The requirements of this paragraph shall not apply in the case where one bidder has submitted a bid, or a bid of only one bidder has been evaluated as complying with the requirements of the invitation;”;

(6) point 41 shall be amended as follows:

“41. Where as a result of the evaluation conducted at the bid opening and evaluation session, inconsistencies with regard to the requirements of the invitation are detected in the bid of the bidder, including the cases where the documents, or a part thereof, included in the bid and approved by the bidder that is a resident of the Republic of Armenia are not certified by electronic signature, the commission shall suspend the session for one working day, and the secretary of the commission shall notify, in an electronic form, the bidder thereof on the same day, by suggesting him or her to eliminate the inconsistency prior to the expiry of the suspension period. The description of detected inconsistencies shall be introduced in the notification sent to the bidder.”;

(7) sub-point 2 of point 43 shall be amended as follows:

“(2) publish in the journal the printed (scanned) versions of the original copies of the statements on absence of conflict of interests signed by him or her and the members of the evaluation commission present at the bid opening and evaluation session, except for the procurements carried out on the basis of points 1, 2, 3, 4 and 20 of the list approved by sub-point 4 of point 23 of this Procedure.”;

(8) points 45 and 48 shall be repealed;

(9) in sub-point 1 of point 69, the words “at least seven” shall be replaced with the words “at least five”;

(10) in point 102, the words “1 December” shall be replaced with the words “15 December”;

(11) point 106 shall be amended as follows:

“106. Failure to submit a report to the authorised body shall lead to the suspension of financing of the given procurement contract until the submission of the report or adoption of relevant decision by the Government Republic of Armenia.”;

(12) the second sentence of point 109 shall be amended as follows:

“the person referred to in this point shall deliver a positive opinion on the results of performance of the contract or a part thereof, where the goods supplied, works performed or services provided are in compliance with the conditions of the contract, or the quality features of the goods supplied exceed the requirements set by the contract, by ensuring the satisfaction of the need.”;

(13) point 19 shall be repealed.

2. The requirements of this Decision shall not apply to procurement processes initiated prior to the entry into force of this Decision and to incomplete procurement processes, as well as to concluded contracts and contracts in effect.

3. This Decision shall enter into force on 1 June 2022.

|  |  |
| --- | --- |
| PRIME MINISTER  OF THE REPUBLIC OF ARMENIA | N. PASHINYAN |
| Yerevan |  |

19.May 2022   
CERTIFIED BY ELECTRONIC SIGNATURE