



New Public Procurement Law in force

A new Law On Public Procurement" ("New Law") N0. 988-VIQ dated July 14, 2023, has entered into force from January 1, 2024, and the "Law on Public Procurement" dated December 27, 2001, and No. 245-IIQ ("Previous Law") has been abolished.

The New Law defines concepts as beneficiary ownership, framework agreement, financial funds, simple purchase agreement, unreliable suppliers and the relationships arising therefrom.

Unlike the Previous Law, the scope of application of the New Law has been expanded. Thus, non-budgetary state funds and public legal entities have been included in the concept of procuring organization. As a result, the New Law will also cover state institutions and organizations (departments), legal entities whose shares are under state control along with non-budgetary state funds and public legal entities. Additionally, the concept of state funds in the Previous Law has been replaced with the concept of financial funds. Consequently, procurement now includes both state funds and all types of monetary resources used by the state procurement organization.

In order to strengthen the supervision of public procurement, the powers of the supervisory authority have been expanded in the New Law. As a result, the following have been added to the powers of the supervisory authority:

- Requesting documents (information) related to procurement procedures from procuring organizations and suppliers;
- Applying to procuring organizations when there are doubts about the estimated price indicated in the procurement plan, and requesting elimination of discrepancies identified in the procurement plan;
- Participating as an observer in the meetings of procurement commissions;
- Agreeing to an increase or decrease of up to 15% in the volume (quantity) of the procurement subject;
- Making decisions on the approval or non-approval of procurement commission resolution (protocols);
- Conducting registration of procuring organizations, purchase agreements, and unreliable suppliers, as well as making decisions on the duration of their inclusion in the registry;
- Cancelling and adopting new decisions in case of illegal decisions by the procuring organization or procurement commission, or accepting its own decision in place of the procuring organization;
- Having the authority to make decisions on the revaluation of proposals and the cancellation of procurement.

In the Previous Law, only open tender and request for quotation methods were conducted through electronic procurement. However, except for closed tender, the New Law envisages that all announcements for the solicitation of proposals should be published on the single internet procurement portal, and all procurements, regardless of their value and method, except for

procurement involving classified information, should be conducted on the single internet procurement portal.

To ensure transparency in public procurement, the following provisions have been included in the New Law:

- The purchase of the procurement subject not included in the procurement plan can only be carried out with the approval of the supervisory authority;
- Prohibition of the participation of subjects with the same beneficial ownership and mutually dependent persons in the same procurement.

The request for proposal method and limited participation tender method have been removed in the New Law.

Additionally, request for quotation method can be used for procurements up to AZN 100,000.

Furthermore, there are innovations in the New Law to support micro, small and medium-sized entrepreneurs. It has been specified that all procurements conducted via request for quotation method should only involve the participation of micro, small and medium-sized entrepreneurship entities. Hence, when the estimated price of the procurement subject is up to AZN 30,000, the procurement should only be conducted with the participation of micro and small-sized entrepreneurship entities, and when it is between AZN 30,000 and AZN 100,000, it should be conducted with the participation of micro, small, and medium-sized entrepreneurship entities.

Additionally, it has been determined that the amount of performance guarantee to be submitted by micro and small-sized entrepreneurs should be 5% of the total amount of the procurement contract, not 10%. Moreover, it has been specified that the advance payment to be made to successful micro and small-sized entrepreneurs should be 50% of the total amount of the procurement contract, not 30%.

Regarding the optimization of the proposal submission period, the time required for the submission of proposals has been reduced from 30 business days to 15 business days, depending on the estimated price during open tender. In addition, it is envisaged that the applications and complaints submitted by suppliers should be responded to within 5 (five) business days upon completion of the evaluation of proposals.

This Law came into effect on January 1, 2024.

A number of regulations have been adopted to implement the new public procurement law.

The Cabinet of Ministers of the Republic of Azerbaijan has approved a number of rules to implement new State Procurement Law, which has come into force on January 1, 2024, as below:

- Approval of limits of integration of information resources into a single internet portal of public procurement
- Rules for keeping registers of purchased organizations, procurement contracts and unreliable suppliers
- Regulation on the single internet portal of public procurement and the Rules for conducting electronic procurement
- Criteria for assessing the compliance of suppliers with the requirements of professionalism, experience, financial capabilities and solvency in the relevant field for the execution of the

procurement contract for the open tender, two-stage tender, closed tender and quotation request methods

- Rule on application of procurement discount
- Rules on amounts of the fee to be paid for using the unified internet portal of state procurement and the participation fee to be paid for submitting proposals, their payment, refund and distribution of the paid funds and for their use
- Approval of model form of framework agreement, request for proposal and simple procurement contract”
- Approval of the form of the decision on the assessment of the set of documents on compliance and compliance indicators
- Approval of the form of the final protocol on the results of the procurement according to the procurement method
- Rule on the form of the procurement plan, as well as the classification codes for marking the subject of procurement in the procurement plan, set of compliance documents, set of conditions and announcement (invitation) on the attraction of proposals and their use
- Rule on probable price calculation
- Approval of the model form of the procurement contract on the subject of purchase
- Model form of a set of conditions.