



Increasing Transparency and Accountability in the Public Procurement

1. The Public Procurement System: Background and Achievements

For years, the Georgian public procurement system was bureaucratic, ineffective, and largely inaccessible to the public. The system was entirely paper-based and documents were inappropriately archived. Since December 1, 2010, public tenders have been implemented through electronic auction. To participate in public procurement, companies must register in the e-procurement system.

The public e-procurement system - www.procurement.gov.ge - is open to everyone (not only procurers and suppliers). Anyone can search both open and completed tenders by category, including: procuring organization; type of good or service; tender documentation; tender price; potential suppliers, etc.

The electronic system is improved regularly. For example, legislative changes were made in 2015 and 2016. Since November 1st, 2015¹ the public procurement agency agreed to carry out simplified tenders through the unified electronic system. These legislative changes, which entered force in July and August 2016, introduced one and two stage tenders without bargaining. These are qualitatively new tender types. In two stage tenders, bidders are rated based on a number of criteria and the supplier which has the best quality to price ratio is selected. Hence, the lowest bid is no longer the primary selection criteria.

2. Challenges for public procurement: What can be achieved through civic monitoring

The most serious problems with the public procurement system include:

- i. Overuse of simplified tenders;
- ii. Ministries and agencies make plans based on trends in previous years, rather than on their needs, which leads to frequent planning changes;
- iii. Restricted deadlines for companies to bid on tenders;
- iv. Requests for quotes are poorly drawn up or adjusted to a specific company/producer, making bidding less competitive;
- v. Overuse of simplified electronic tenders (71.6% of total procurements in 2015). Objects which agencies want to procure that are similar should be grouped into categories and procured through a consolidated tender;
- vi. Contracting authorities fail to do market research before putting goods/services to tender, leading to mismatches between what's needed and what's supplied;

¹ Order #13 of the Procurement Agency's Chairman, 17 August, 2015. "Criteria for defining and implementing simplified tenders"

- vii. Procurement staff are poorly qualified. This results in inaccurate goods/services specifications being provided in requests for quotations.

Civic activism and monitoring of public procurement could help with the above problems. The three main hindrances to civic activism and civic monitoring, as well as relevant recommendations, are provided below.

2.1. The role of civic activism and a civic monitoring mechanism in increasing the transparency and accountability of public procurement

Problems with procurement cannot be solved through existing public-private cooperation formats, such as the Dispute Resolution Council or the Public Finance Reform Coordinating Council.² If civil society, international organizations, or donors independently raise these issues it will be ineffective, because they will not have a formal mechanism to collectively make recommendations to the agency and/or government. Hence, the creation of a civic monitoring mechanism – a civil society public procurement transparency consultation council – is crucial. At such a council, government representatives, the agency, and procurers could all be presented with recommendations on public procurement policies and practices such as:

- ✓ *Subsidies to suppliers which offer local goods to procurers* (Draft Order of the Chairman of the Agency³): With this initiative, suppliers of local goods would gain an additional percentage of the value of the tender if they win. It would not be provided to suppliers of imported goods. This protectionist approach will distort the public procurement market;
- ✓ *Risks of abuse of simplified tenders*: Simplified tenders, which bypass the electronic system, are currently the most serious problem with the public procurement system. Since November 1, 2015, when new regulations came into force, procurers have been required to obtain the State Procurement Agency's agreement and substantiation of the need for the procurement through simplified tender. Following the new regulations, simplified tenders decreased by 29% (from November 1, 2015 to April 30 compared to the same period in 2014-2015).

Because simplified tenders still bypass the electronic system, it is important that a civic monitoring mechanism look into whether:

- Abuse of simplified tenders persists;
- The initiative was an effective deterrent to abuse;
- How well procuring entities substantiate the need to negotiate with one organization. Notably, the agency's report found that only 9% of requests for simplified tender were rejected;
- Transfer of the information provided on the public procurement platform (public procurement plans, contracts, registrations, technical characteristics, etc.) into an electronically readable format (Word or Excel). Not using such formats creates a serious problem for those attempting to analyse procurement data, and in many cases analysis becomes impossible. Electronically readable formats provide the public with the ability to

²The Ministry of Finance's Public Finance Reform Coordinating Council periodically discusses progress on the implementation of the State Procurement Agency's action plan together with civil society and donors.

³ The draft order is not yet public.

work with large amounts of information about public procurement and analyse and monitor its use.

This seemingly technical problem is somewhat challenging to resolve, because it requires information about procurement to be transferred into an electronically readable format, which the procurer is unable to generate (registration numbers, qualifying documentation, etc.). Consequently, by government resolution, it is necessary for procuring agencies to create defining qualifications and other documentation in an electronically readable format for users. This became possible following the Chairman of the State Procurement Agency's Order #5 of May 21, 2015, which required full information to be downloadable in an electronically readable format.

The issues discussed above require legitimacy to resolve, which a collective monitoring mechanism could provide.

The organizations which would participate in a civic monitoring mechanism are, in some cases, already independently performing the necessary analysis to come up with recommendations, with their own resources. However, they do not have a collective mechanism to formally submit recommendations to the government and the agency. A single, approved mechanism would give organizations engaged in public procurement analysis the opportunity to advocate collectively.

Recommendation: Civil society and the State Procurement Agency should create a civil society public procurement transparency consultation council to monitor public procurement. The active participation of society and occasional public hearings could lessen ineffective public procurement and significantly improve the system in general. Current public-private cooperation formats are inadequate for achieving these goals.

2.2. Annual Procurement Plans

Planning is a critical stage in the procurement process. It depends directly on economical and effective implementation. Analysis from a number of organizations has shown that the largest problems with public procurement occur in the planning stage.

Although civic monitoring could be an effective mechanism, under the current conditions this is not possible. A civic monitoring mechanism cannot carry out monitoring if the agency does not ensure that annual procurement plans contain what is required in secondary legislation.⁴ Without detailed annual procurement plans, the public cannot know what the approximately 4,500 procurers intend on purchasing with the more than GEL 3.2 billion in resources annually at their disposal.⁵

Recommendation: In line with international best practice, the Agency should ensure that procurers' annual procurement plans include:

⁴ Order #2 of the State Procurement Agency's Chairman of February 10, 2011, "On the rules for procuring organization reports"

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- ✓ Information needed prior to procuring⁶ including the definition of the characteristics of the object to be procured, its estimated value, and the means of procurement implementation; specification of funding; and preparation of the documentation for the implementation of the procurement and contracts for the project;
- ✓ Descriptions of homogenous groups of objects to be procured. Homogenous groups are made up of either identical objects or ones with similar components, technical characteristics and/or functions, defined by rules in legislation;
- ✓ Definitions of the objects to be procured (goods, works, or services), their technical characteristics, (e.g. quality, functionality, safety standards, size, cleaning requirements, make and mark, method and process of production, symbols, and terminology, etc.) in line with the procuring agency's needs;
- ✓ Identification of compliance requirements;
- ✓ Identification of deadlines and locations;
- ✓ Acceptable contractual conditions for potential suppliers and procuring agencies based on market research;
- ✓ Indications of the quantity of goods and/or amount of works or services to be procured based on current supply;
- ✓ Descriptions of the objects to be procured, if present, which the procuring organization can procure using unified tenders (or through a consolidated tender);
- ✓ Descriptions of the expected deadlines for procurement based on the selection procedure that will be used for procurement;
- ✓ Descriptions of the volume of services to be procured, based on current needs;
- ✓ Estimations of the value of the object;
- ✓ Costs associated with procurement implementation;
- ✓ For long-term contracts and contracts still in force from the past year, financial obligations for the current year;
- ✓ Provisional dates of conclusion of contract;
- ✓ Specifications of the estimated value of procurements, taking into account all the costs associated with the procurement, the time the contract will be in force (including the possibility of contract extension), prices at current levels, and experience with the implementation of similar procurements. If a good or service will cost less than GEL 500,000, or less than GEL 1,000,000 for works, prices should be determined based on research on the domestic market. The price of goods or services valued at GEL 500,000 or more or works over GEL 1,000,000 should be determined based on general market prices;
- ✓ Descriptions of any other conditions connected to the procurement.

It is important that secondary legislation not only takes into account the general responsibility of procurers to include all the costs that can be expected in procurement, but also carries out cost estimates (for the annual procurement plan, only the estimated cost of procurements is currently required; this is insufficient). As noted, in the specifications of the object to be procured, all the costs

⁶ This does not concern urgent procurements.

the government will incur in implementing the procurement should be noted, as well as the expected period of the contracts being in force (including the potential for extension of the contracts), current price levels, and similar procurement implementation experience.

2.3. Dispute Resolution Mechanism

Participants in the public procurement system can appeal the results of a tender before the Procurement Complaints Review Council. The council is composed of 6 members, with equal representation from NGOs and the State Procurement Agency. Any representative of a non-governmental organization can become a member of the Council. Participants in the selection vote by simple majority for two council members, who are selected for a one year term. Any representative of a non-governmental organization can run for a position.

In 2015, there were 1,017 complaints (3% of all tenders that year) brought before the board – a ten-fold increase since 2012 -- which suggests trust in the council.

Under Article 1, Point 4 of the rules the Procurement Complaints Review Council works under, the Council is independent and not subordinate to any another entity or official. Under Article 3, Point 2 of the rules, however, the chairman of the council is the Chairman of the State Procurement Agency. The Chairman appoints two members of the Agency to the council for one year terms. The Agency takes care of logistics for the council. This is a serious risk to the council's independence. While it may not create a problem right now, it could become one.

Recommendation: The full institutional independence of the Procurement Complaints Review Council should be set out in legislation, by providing it with a budget and establishing it as an independent organization (Law on Public Procurement, Article 23 and the Rules of the Public Procurement Dispute Resolution).

Sources Cited

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2. Order #13 of the State Procurement Agency's Chairman of August 17, 2015, "Criteria for defining and implementing simplified tenders"
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5. State Audit Service: "Audit of the effectiveness of the public procurement system"
6. Transparency International Georgia, Analytical Research on Public Procurement⁷
7. Open Government Partnership, 2016-2017 Action Plan
8. www.procurement.gov.ge
9. www.tendermonitor.ge

⁷ <http://www.transparency.ge/post/report/sakartvelos-shesqidvebis-elektronuli-sistema>;
<http://www.transparency.ge/post/report/sakhelmtsipo-shesqidvebis-sistemis-gamotsvevad-gamartivebuli-shesqidvebi-rcheba>
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