

# Transparent Public Procurement Rating

INSTITUTE FOR DEVELOPMENT OF  
FREEDOM OF INFORMATION



## Implementation Assessment of the Georgian Public Procurement Legislation

The Implementation Assessment of the Public Procurement Legislation of Georgia was prepared by the Institute for Development of Freedom of information (IDFI).

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# Introduction

Public Procurement is a substantial part of Georgia's economy. According to the World Bank's latest Public Procurement Performance assessment, from 2013 to 2015 procurement amounted to 9.9% of the country's GDP and 31.1% of overall public spending.<sup>1</sup>

Public procurement is one of the biggest responsibilities of the government. Essentially, procurement is the means to provide necessary services, goods or works to the public. While public procurement can be a stimulus for development, it can also be a solid ground for corruption, clientelism and collusion. This is the reason why public procurement needs constant scrutiny, data gathering and analysis.

The purpose of this paper is to analyze the procurement system of Georgia, including problems related to the implementation of the legislation, assess its performance, point out its strengths and weaknesses and provide recommendations on solutions. The paper is based on the assessment of the Public Procurement Legislation of Georgia (PPL) that was conducted within the framework of the project Transparent Public Procurement Rating (TPPR). The assessment relies on the Transparent Public Procurement Rating methodology and its core benchmarks which comprise the following:

1. Uniformity of the Legislative Framework
2. Efficiency
3. Transparency
4. Accountability and Integrity
5. Competitiveness and Impartiality

The assessment combines quantitative data analysis and qualitative research methods, such as desk research and review of legislative base of Georgia's procurement system, websites of state institutions, state entity reports (State Procurement Agency, State Audit Office), interviews with officials from state institutions and official reports of various international institutions (the World Bank, OECD, EBRD). The research team analyzed the procurement data from 2011-2016, but focused primarily on the latest period of 2015-2016.

## Public Procurement System of Georgia

Georgia's public procurement electronic platform (e-platform) is considered to be one of the most transparent in Europe and Central Asia. Such acclaim was achieved after a set of rigorous reforms and the willingness of the Government of Georgia (GoG) to manage public procurement more efficiently. With the initiative and coordination of the LEPL Competition and State Procurement Agency<sup>2</sup> substantial reforms have been carried out since 2010.

In 2009, the current Public Procurement Legislation (PPL) was adopted, which improved the legislative framework significantly. The new legislation ensured increased level of transparency, non-discrimination, competition and introduced several procurement procedures. Dispute settlement mechanism and procedures were established in 2011 to deal with procurement disputes.

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<sup>1</sup> "Public Procurement Performance Georgia: Initial Conclusions", *The World Bank (WB)*, February 2017, p.7.

<sup>2</sup> Currently, the State Procurement Agency and Competition Agency are two separate entities.

Along with legislative changes, an e-platform was created that allowed conducting public procurement online. Paper-based procurement was completely rooted out and electronic means of procurement became mandatory. Before this reform, tenders were paper-based, which resulted in approximately 20 million paper documents being accumulated in State Procurement Agency.<sup>3</sup> This made data analysis practically impossible.

The reforms proved to be fast and efficient. International organizations, such as - European Bank for Reconstruction and Development (EBRD), Asian Development Bank (ADB) and United Nations (UN) have lauded the e-platform, which increased the trust towards the public procurement system.

Over the years, additional changes were made to the legislation and secondary legislation. In 2013, the PPL was amended to introduce the system of black and white listing of companies and expand the number of procurement procedures, which is now comprised of:<sup>4</sup>

- Electronic Tender has 4 varieties:
  - Electronic Tender with reverse auction
  - Open Procedure (Electronic Tender without reverse auction)
  - Electronic Tender with Two-Stages
  - Electronic Tender with special rule

There are two other major forms of public procurement:

- Consolidated Tender (equivalent of Framework Agreement)
- Direct Procurement (equivalent of simplified procurement/single source procurement)
- Contest

The level of transparency of the e-platform is high, as information on annual procurement plans (e-plan)<sup>5</sup>, tenders, suppliers, bids, contracts, contract performance is mandatory to publish and available on the e-platform. The Public Procurement Agency of Georgia (SPA) publishes annual reports on procurement activities and also has an interactive portal, where major data on procurement are visualized.<sup>6</sup>

Therefore, the public procurement legislation and the e-platform ensure transparency of the system, a competitive environment as well as non-discriminatory system, offering dispute settlement procedures. Despite these characteristics, data analysis and research have revealed several flaws that require further improvement of the overall health of the public procurement system.

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<sup>3</sup> "Competition and State Procurement Agency Report 2011", *Competition and State Procurement Agency*, 2011, p. 4. [http://procurement.gov.ge/files/\\_data/eng/about\\_agency/cspa\\_report\\_2011\\_eng.pdf](http://procurement.gov.ge/files/_data/eng/about_agency/cspa_report_2011_eng.pdf).

<sup>4</sup> For more details view User Manual of the e-platform - [http://procurement.gov.ge/getattachment/ELibrary/Manuals/new-user-guide-ENG\\_v-5-01.pdf.aspx](http://procurement.gov.ge/getattachment/ELibrary/Manuals/new-user-guide-ENG_v-5-01.pdf.aspx)

<sup>5</sup> Information on all procurements to be conducted within a year.

<sup>6</sup> The analytical module of the SPA website is available in Georgian and English, for more information, view the interactive portal of the SPA - <http://charts.procurement.gov.ge/eng/index.php>.

# Planned Reforms and Current Developments

The GoG shows readiness to improve the procurement system. During the 2016 UK Anti-Corruption Summit, Georgia expressed its intention to further the transparency of its procurement system and adopt the Open Contracting Data Standard (OCDS), which enables disclosure of data and documents at all stages of the contracting process by defining a common data structure and system of publishing information.<sup>7</sup> The SPA committed itself to aggregating information on tenders, direct procurement and e-plans and within the framework of the Technical Assistance Project on Improving Efficiency and Transparency in Public Procurement in Georgia, the World Bank (WB) will assist the SPA to adapt the system to the OCDS.

Apart from this, Georgia signed the Association Agreement (AA) with the European Union (EU). The agreement entered into force on July 1, 2016, and involves, among other things, the harmonization of the Georgian procurement legislation with the EU procurement directives. To complete this substantial reform, Georgia will have to gradually harmonize its PPL with the EU acquis over the next 8 years in 5 phases. The most recent amendments to the PPL within this reform which were adopted by the Parliament in 2017, among others aim to:

- Abolish the Simplified Electronic Tender procedure;
- Increase the timeframes for the Electronic Tender Procedures; and
- Introduce principles of equal treatment and proportionality in the PPL.

# Performance of the Public Procurement System

The Georgian public procurement system has shown evident signs of improvement over the last 6 years. Statistical data gathered during the years 2011-2016 show an increase in public procurement activities, number of users of the e-platform, use of tendering and the amount saved as a result of tender procedures.

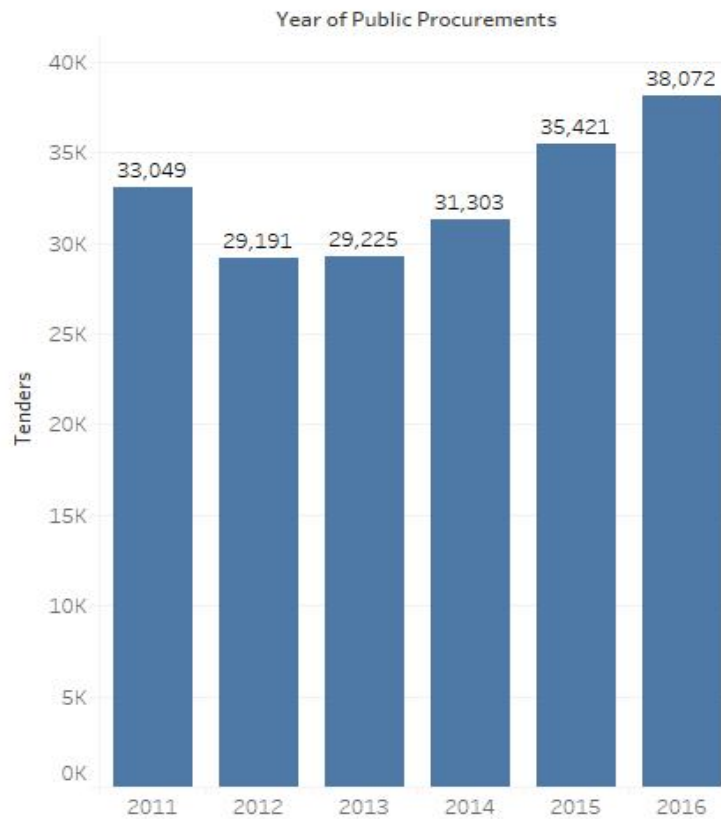
Already in 2011, the first year when the e-platform was fully operational, 33,049 e-tenders were conducted, which is almost 14 times more than the paper-based tenders that had been conducted in 2010, before the e-platform. Over the next two years, there was a slight decline in the number of announced tenders. However, since 2014, tender procedures enjoy a steady rise (see graph # 1). For instance, in 2016, the number of tenders amounted to 38,072.

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<sup>7</sup> "Open Contracting Data Standard: Documentation", *Open Contracting Partnership (OCP)*, <http://standard.open-contracting.org/latest/en/>.

**Graph # 1**

**Number of Tenders by Years (2011-2016)**

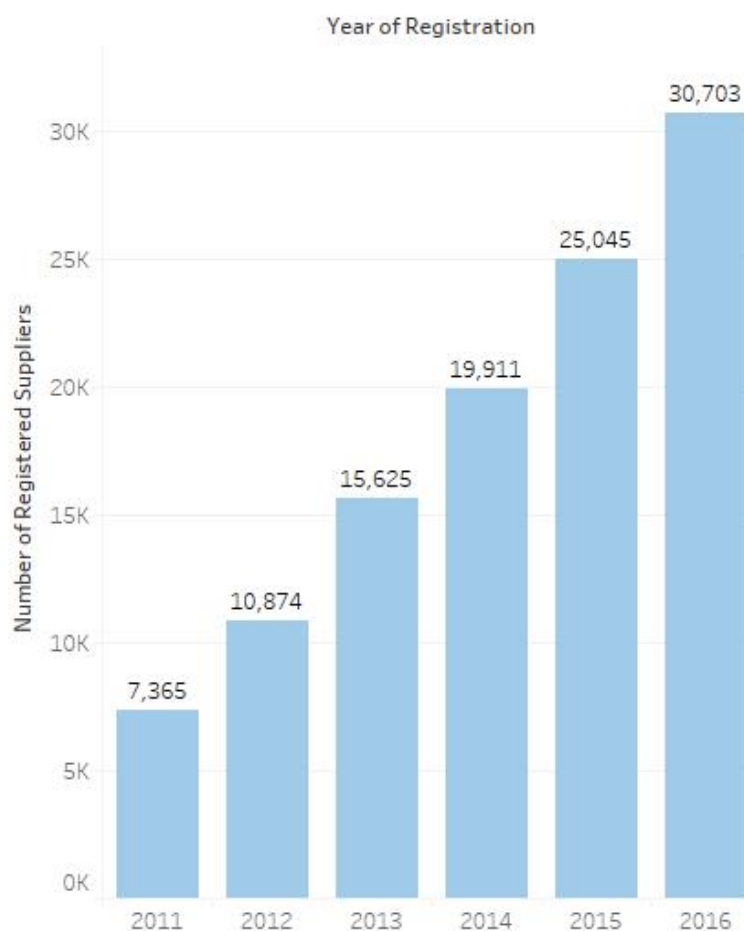


Sum of Tenders for each Public Procurements Year. The marks are labeled by sum of Tenders.

Awareness about the new public procurement system was also gradually increasing. The number of registered suppliers went from 7,000 in 2011 to 25,045 in 2015 (see graph # 2) and continues to rise every year. One of the reasons for such a quick popularity of the e-platform was the fact that it took down the geographic barrier for participation that plagued the previous paper-based system.

**Graph # 2**

### Number of Registered Suppliers by Years



Sum of Number of Registered Suppliers for each Registration Year. The marks are labeled by sum of Number of Registered Suppliers.

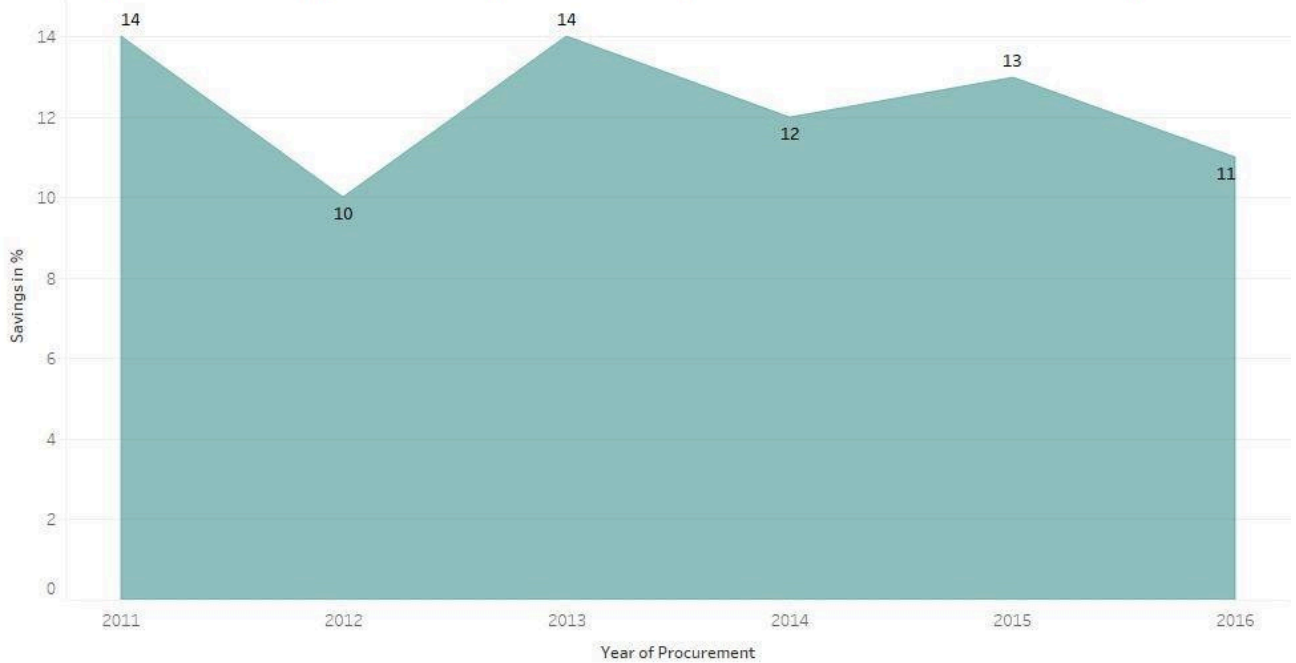
Saving public funds is one of the principal goals of using a tender to procure goods or services. In this regard, Georgia has been performing relatively well; on average, the country has saved more than 10% of its financial resources designated for public procurement using various tendering procedures (see graph # 3).<sup>8</sup>

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<sup>8</sup> The savings result from the difference between the estimated value of the procurement and the contract price registered as a consequence of electronic trading

**Graph # 3**

**Savings Made through Tendering Procedures (% of Total Estimated Amount)**

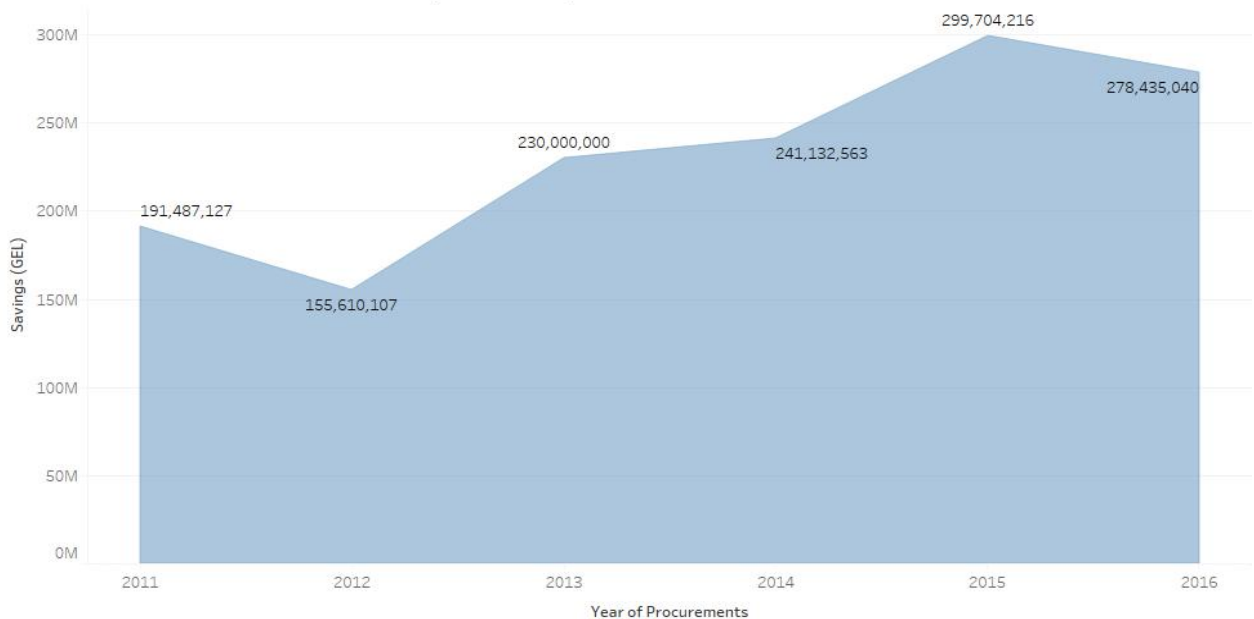


The plot of sum of Savings in % for Procurement Year. The marks are labeled by sum of Savings in %.

In monetary terms, savings have been increasing almost every year, which is partly due to factors such as - the continual increase of the total procurement budget and the number of announced tenders. At its lowest, Georgia saved 155 mln GEL as a result of 29,191 tenders in 2012, and at its highest – almost 300 mln GEL as a result of 35,421 tenders in 2015 (see graph # 4). Overall, Georgia generated savings of more than a billion GEL since the e-platform was launched in 2010. The performance of the system in this regard remains satisfactory.

**Graph # 4**

**Sum of Savings According To Years (2011-2016)**



The plot of sum of Savings (GEL) for Procurements Year. The marks are labeled by sum of Savings (GEL).



# Main Problems and Areas for Improvement

## Efficiency

The Georgian Procurement System has two main efficiency related problems, a high number of failed tenders and a high share of direct procurement.

### Failed Tenders

In the period of 2011-2015, almost a third (an average of 30%) of all electronic tenders failed in Georgia. Apart from the fact that failed tenders delay government processes, some of them end up as direct procurement, which aggravates the problem by excluding open competition and removing the opportunity to save public funds.

According to the Georgian legislation, a tender vary by status, which can be considered as failed tenders - if it is canceled by the procuring entity, if no eligible supplier is found among tender participants, or if it has no bidder. The latter was the reason for 80% of all failed tenders.<sup>9</sup>

Flawed planning and lack of information in the annual e-plan are two of the main possible reasons for the high failure rate. Currently, e-plans give the following information:<sup>10</sup>

- Main CPV code<sup>11</sup>
- Approximate price
- Procurement procedure and basis (if required)
- Period of intended purchase (by quarter)
- Source of funding

Even though this is helpful information that ensures a high level of transparency, including more detailed information, such as more detailed CPV codes and timeframe (month rather than quarter), as well as additional information, such as the location (at least the region and municipality) of the procurement, would allow suppliers to better plan their business processes and bid on more tenders. Interviews with the SPA confirm the hypothesis that more detail in e-plans could reduce the number of failed tenders.

With information on regions and municipalities being available and relevant categories added to the search module, businesses will be able to analyze information geographically, which will enable them to consider how the location of the procuring entity and transportation expenses may influence their economic activity, or they may calculate which region or municipality they should focus on more.

Additionally, the current practice shows that the products or services listed in the e-plans are not detailed enough, which makes it difficult for businesses to prepare well in advance. For example, if a procuring entity wants to procure goods under CPV Code 22400000 (stamps, check forms, stock certificates, trade advertising materials, catalogues and manuals etc.), without indicating the exact item to be procured, businesses will not be able to decide what to produce or purchase (for resell). They will have to wait for the

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<sup>9</sup> Based on the statistical data gathered by the SPA and the World Bank.

<sup>10</sup> The e-plans can also be downloaded in Excel format from the e-platform.

<sup>11</sup> The common procurement vocabulary (CPV) establishes a single classification system for public procurement aimed at standardizing the references used by contracting authorities and entities to describe procurement contracts

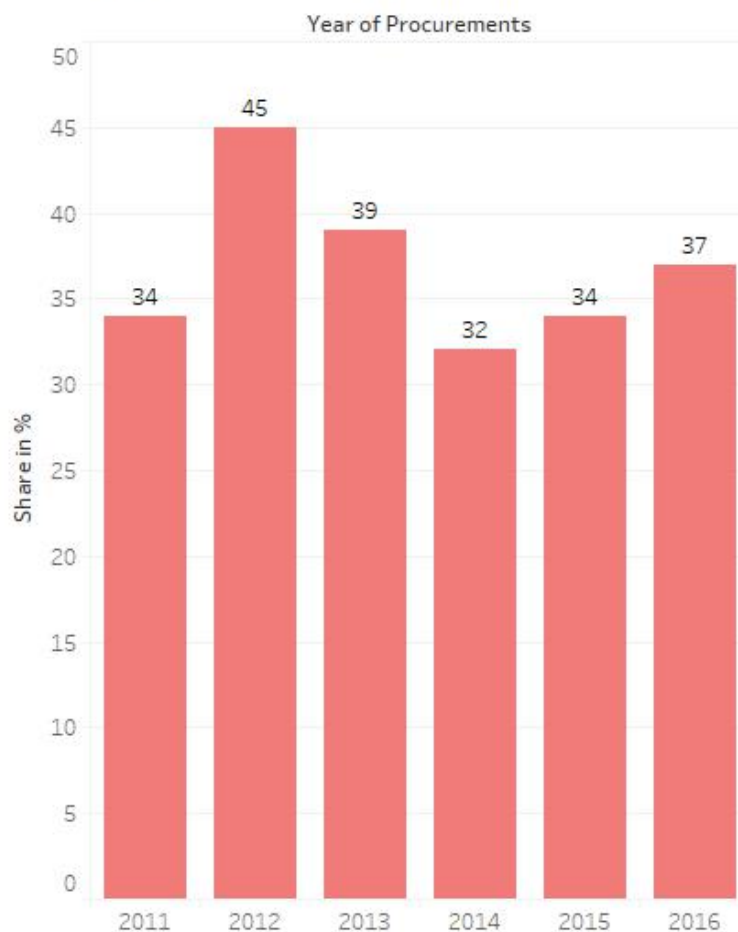
actual tender to find out the exact items and quantity, which may lead to them not participating in a tender as they may have invested human and financial resources in goods that are not being actually procured.

### Direct Procurement

Since 2011, on average, more than 35% of all public procurement (in terms of value) in Georgia was conducted through direct procurement procedures (see graph # 5). The high share of direct contracting has always been a point of critique of Georgia’s procurement system from both local and international organizations. However, while this number is undoubtedly high, analysis of the value of overall direct procurement does not necessarily reflect the actual trends related to this procedure. This is due to the fact that the data includes a number of significant outliers - mostly large scale (sometimes worth several hundred million GEL) infrastructure projects.

Graph # 5

### Share of Direct Procurements in the Total Value of Public Procurement Contracts (2011-2016)



Sum of Share in % for each Procurements Year. The marks are labeled by sum of Share in %.

Therefore, looking at the number of direct procurement contracts may be a better indicator of the overall trend and performance of the system. From this point of view, the Georgian procurement system had positive results in 2016, when the number of direct contracts signed on the basis of 4 of the most commonly

invoked legal exceptions, listed below, was reduced by as much as 35%.

Apart from the monetary threshold of 5,000 GEL (app. 2,000 USD) for using direct procurement, the 4 most common legal bases for using direct contracting in Georgia are:

- Exclusive right (of a supplier on certain goods, works, or services)
- Urgent necessity
- Prevention of deterioration (of the quality of a previously procured object)
- Holding of an event of state and public importance without hindrance and within limited time frames

The impressive reduction in the number of direct contracts was achieved with the adoption of new regulations that obligated procuring entities to get direct procurement approvals from the SPA for these four legal exceptions. In fact, in case of one of the four exceptions, urgent necessity, the number of direct procurement contracts was reduced by an impressive 61%. A special questionnaire was created to ensure the decision is well-substantiated. Additionally, any interested user of the e-platform can express their opinion about the plausibility of the request, after which the SPA has to deliberate on the comment and consider it while making a decision.

Even though there are evident signs of improvement, several years of observation will have to be made to make sure this trend continues. Such observation will demonstrate whether the pattern is attributable to the new system of approval or any other variable.

### **Price-Quality Ranking**

Introduction of two-stage Electronic Tenders in the summer of 2016 was one of the most important changes to the PPL since the system was launched in late 2010. Compared to its counterparts in Central and Eastern Europe (CEE), the Georgian electronic tender with two stages of price and quality ranking is superior in the sense of successfully excluding any subjectivity from the evaluation process. More specifically, the SPA created an algorithm that automatically calculates the results for different components of the evaluation criteria, the weights of which are determined by the procuring entity. The mathematical formula makes the procurement with two stages reliable and efficient.

However, this procedure is rarely used in practice; most tenders that are announced in Georgia do not have a quality component and the winner is determined by the lowest bid. The PPL also does not obligate procuring entities to include environmental and/or social costs as evaluation criteria. However, this change will have to be made within the framework of the EU AA roadmap.

## **Transparency**

Overall, the Georgian PPL ensures a high level of transparency of the public procurement system. Even though the PPL does not specify the format for publishing procurement data (it only states that the information must be available electronically), in practice almost all information related to public procurement is being published either as scans, PDF, Excel files or separate fields on the e-platform depending on the information.

All of the published information is available electronically on the e-platform free of charge:

- Public procurement annual plans (can be downloaded in Excel format)
- Notices of intended procurement (including tender documentation and its amendments)

- Bids offered by tender participants
- Complaints to the dispute settlement board
- Contract performance information
- Dispute resolutions
- Tender candidate applications
- Decisions of the tender commission
- Performance information (e.g. acceptance act and milestone reports)

Despite all of its virtues, one of the shortcomings of the e-platform is that it does not provide access to the aggregated data on public procurement in machine-readable format. This makes it virtually impossible for any interested party, be it a citizen, business or civil society organization, to analyze the data for the purposes of identifying business opportunities, possible cases of corruption etc. The process of aggregating data involves redesigning of data organization methods, better structuring of databases and the possibility to use the data for analysis.

To remedy this problem, in 2017, the SPA has started working on implementing the Open Contracting Data Standard (OCDS) in the Georgian public procurement e-platform. This means that the system of collecting, storing and publishing procurement related data will be harmonized with the OCDS. The newly published information will then have to be aggregated and published on the SPA website after which, it will be free to reuse. Currently, the SPA is cooperating with the CSO sector on what type of information to publish; initially, the SPA plans to make available aggregated information on public procurement from 2016.

### **Contract Related Information**

Currently, the Georgian PPL ensures that once the contract is signed, relevant information contained within it is published through the e-platform. However, only 4 types of information are published as separate fields on the e-platform: 1. Supplier and supplier related information; 2. Number of the contract; 3. Value of the contract (contract amount); 4. Duration of the contract and the date when the contract was uploaded.

The rest of the information is contained within the PDF scan of the contract, which is also obligatory to publish in its full form. Analyzing additional information on contracts, such as the exact nature and quantity of procurement, or milestones of executing the contract require accessing the PDF of the contract and skimming through vast information. Therefore, additionally detailing information, classifying and rendering it machine-readable will increase the analytical value of the information that is currently being published. For instance, the following contract-related information can be made machine-readable:

#### Procurement category related information:

- Main CPV of the goods or services procured
- Detailed CPV of the goods or services procured (further breakdown is possible by indicating what is being procured, e.g. chair, table, beverages, alcohol etc.)
- Where applicable, country of origin of the product or service procured

#### Date and time related information:

- Date of cancellation of the contract (where applicable)
- Cause of cancellation of the contract (where applicable)

#### Contract amendment related information - main aspects

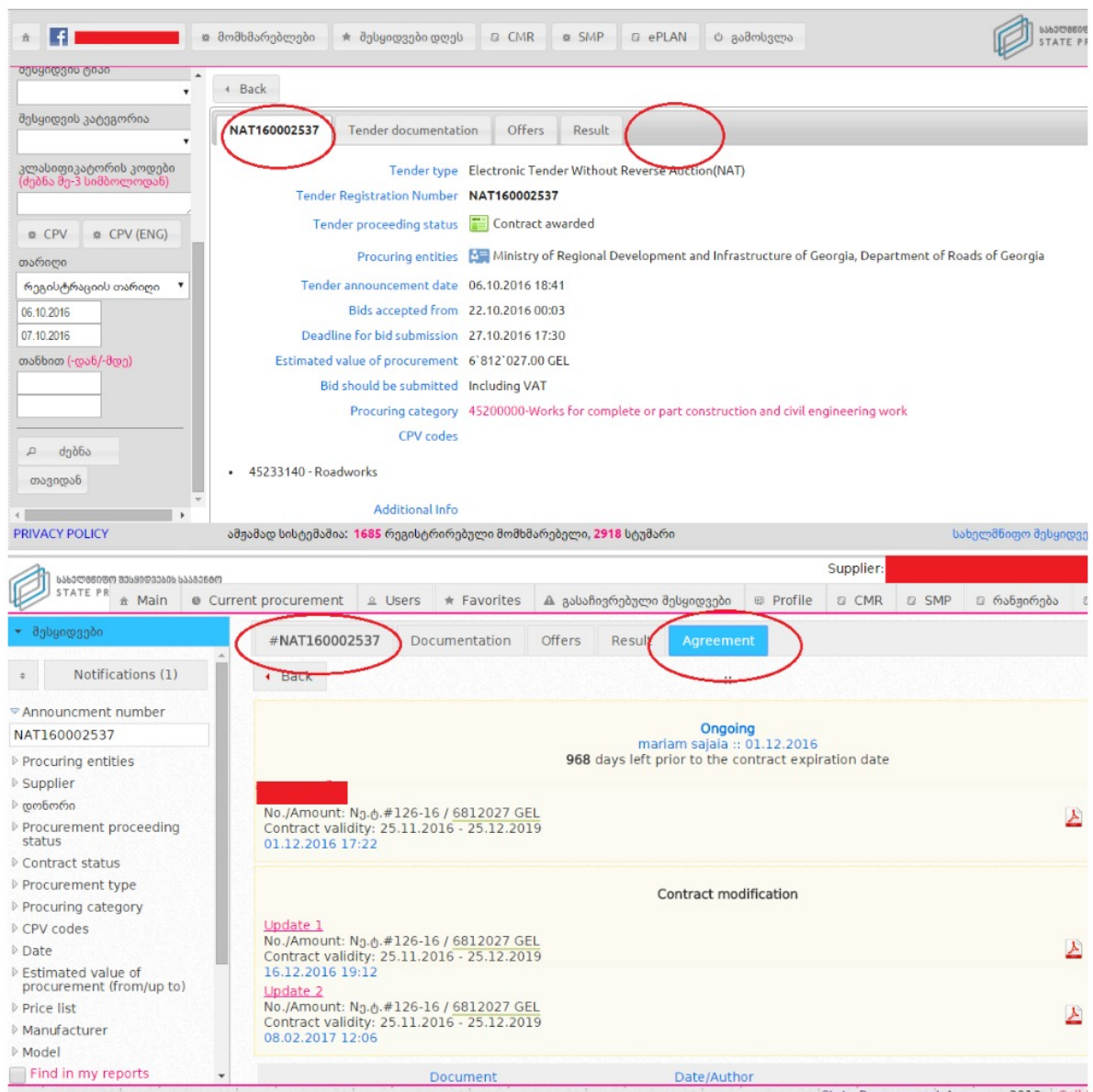
- Changes to the duration of the contract

- Changes to the contract value
- Changes to the number of units of procured goods

Additionally, a technical flaw of the e-platform was discovered during the research period. Namely, contract performance related information such as - act of delivery and acceptance, milestone reports or payments are not available to the guest users of the e-platform.

The e-platform allows any interested person to view procurement related information without being registered on the e-platform, via their personal Facebook account. It is simply enough to enter the e-platform as a guest user and go through the Facebook account authentication procedure. Even though the PPL ensures that all users of the e-platform should have access to contract performance information,<sup>12</sup> in practice registered users and guest users of the e-platform have different quality of access. For registered users of the e-platform, an additional module named Contract is visible, where contracts as well as contract performance related information is available. A similar module for the guest users is missing, therefore, contract performance information remains inaccessible (see image # 1).

Image # 1



<sup>12</sup> Order No. 2 of the Chairman of the State Procurement Agency, art. 5.

## Subcontractors

The Georgia PPL does not include an obligation to make the information on subcontractors public in cases where sub-contracting takes place. Information on subcontractors is not published in practice either, making this the only area where the Georgian procurement system offers no information. This may be a major loophole of the PPL, which could be misused by dishonest procurers or suppliers to engage in corrupt practices, for instance legally avoid conflict of interest clauses of the PPL.

In order to remedy this problem, the legislation must be amended to require information on subcontractors to be made public as soon as it becomes available. Just like in case of the suppliers, basic information on the sub-contractor can be made public:

- Name
- Country of Registration
- Identification number
- Address
- Contact Information
- Bank account information

Additionally, the portion of subcontracting, in terms of the monetary value and work, should also be made public so as to verify who was subcontracted and on what terms.

## Completeness of Procurement Database

One of the major problems related to the transparency of the Georgian e-platform, as well as its enforcement, has to do with the incompleteness of the procurement database. Even though the PPL demands the disclosure of all procurement contracts, in some cases, this information is not available on the e-platform. For instance, the last entry of direct procurement contract of the Ministry of Internal Affairs of Georgia on the e-platform is from June 2015, whereas for the Ministry of Defense of Georgia the last entry was made in July 2016. Direct procurement contracts of the Administration of the Government of Georgia are missing altogether (view image #2) as well as a part of Administration's tender related information.

The screenshot shows a search interface for a procurement database. On the left is a sidebar with search filters: CMR #, Contract status, Procuring entities (with a red circle around the Georgian text 'საქართველოს მთავრობის ადმინისტრაცია'), Supplier (Code), Supplier (Name), Procurement Type, Procuring category, CPV codes, CPV, Date (From/up to), and Estimated value of procurement (From/up to). At the bottom of the sidebar are 'SEARCH' and 'Reset' buttons. The main area on the right displays a red circle around the text 'records not found' and a pagination bar showing '0 Record(s) (page: 1/0)'.

Such issues harm the level of transparency of the e-platform, create problems related to accountability and hinder the analysis of procurement activities of state institutions. Absence of contracts of several procuring entities also point to the problem of enforcing the PPL or the lack of capacity to do so, as all contracts are mandatory to be published on the e-platform. According to the SPA, the agency is working together with other state institutions to solve the above-mentioned problem of missing contracts and will ensure disclosure of the contracts gradually, however the exact time-frames are not known.<sup>13</sup>

## Accountability and Integrity

The Georgian PPL largely ensures the accountability and integrity of the procurement system. One area worth pointing out is that even though the Georgian legislation does not provide for a clear mechanism for consultations with the private sector and civil society, nor does it obligate the SPA to schedule consultations on a regular basis, in practice, the SPA does organize periodic consultations with business sector (twice a month) as well as civil society representatives, where they receive feedback about problems they encounter in their respective sectors or when dealing with the system.

## Competitiveness and Impartiality

The Georgian PPL and the e-platform ensure that all suppliers have equal opportunity to participate in public procurement. There are no obvious discriminatory practices in the legislation, or in practice.

However, the Georgian PPL has had a problem of allowing very short preparation periods for submitting bids, namely a total of 3 days for tenders with value of up to 200,000 GEL (app. 80,000 USD). Such time-frames may have reduced overall competition and led to inadequately prepared bids.

The recent legislative changes to the PPL eradicated this problem, as the Simplified Electronic Tender now has to be abolished and a new system of determining time-frames based on the approximate value of the purchase is to be introduced. The minimum time for preparing tender documentation will be increased to 7 days, which, despite being a substantial improvement, nevertheless falls behind the WTO GPA standard of minimum 10 days of preparation.

## Other Challenges

### Exemptions

One of the controversial issues related to the Georgian PPL is the long list of exemptions from the coverage of the law. This issue has been raised by different international organizations such as the OECD and its Anti-Corruption Network (OECD-ACN).<sup>14</sup>

The very first Article determines the scope of coverage of the PPL and Article 3<sup>1</sup> includes a long list of exemptions from the law.<sup>15</sup> Part of the exemptions may derive from the nature of the entity involved or the

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<sup>13</sup> "Meeting of the chairman of the State Procurement Agency with the Representatives of the Civil Society Organizations", 20 April 2017, Tbilisi, Georgia.

<sup>14</sup> "Anti-Corruption Reforms in GEORGIA: Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan" *Organization for Economic Co-operation and Development Anti-Corruption Network for Eastern Europe and Central Asia*, 15 September 2016, pp. 85-86, <http://www.oecd.org/corruption/anti-bribery/Georgia-Round-4-Monitoring-Report-ENG.pdf>.

<sup>15</sup> "Law of Georgia on Public Procurement", art. 1(3<sup>1</sup>),

sector being exempted. For instance, in cases of the so-called “natural monopolies”, the exemptions may be reasonable, however in other cases they are not substantiated and are unnecessary.

For example, public procurement to be performed with financial resources allocated from the contingency funds of the President of Georgia, the Government of Georgia and the Tbilisi City Hall are listed as exemptions.<sup>16</sup> This means that it is not mandatory to use tendering procedures to make procurements with these financial resources. The exemption also implies that transparency clauses of the PPL do not apply to procurements made with these funds. Therefore, disclosing information on those instances of procurement is not mandatory on the e-platform and publishing contracts depends solely on the goodwill of a procuring entity.

According to the Budget Code of Georgia, the total size of the contingency funds of President of Georgia and the Government of Georgia shall not exceed 2% of the total allocations envisaged by the annual budget.<sup>17</sup> Thus the volume of contingency funds depends on the size of the annual budget and may amount to millions of GEL depending on the size of the budget. Additionally, budgetary code indicates that the contingency funds may be allocated for unforeseen expenditures of the budget, which is a very broad term and may involve regular procurements of goods, services or works.<sup>18</sup>

For example, according to the budget of 2015, GoG’s contingency fund was initially set at 85 mln GEL (app. 40 mln USD), however, during the year it was increased to 170 mln GEL (app. 70 mln USD), of which the government spent 167 mln GEL (app. 68 mln USD).<sup>19</sup> Part of the funds were allocated for cases of urgent necessity and *Force Majeure* situations, however a substantial part of the funds were allocated for various consulting services or organizing events of state importance, purchasing goods or works, all of which could have been regular tenders (view image #3).

**Image #3**

Resolution of the government of Georgia N952 k15.05.15.	For funding the events of the Action Plan for <u>organizing Independence Day - May 26</u>	625,000.0	625,000.0	582,443.9	42,556.1
Resolution of the Prime Minister N303 23.07.15.	For funding prizes named after Shota Rustaveli and Georgian national prizes in the field of art and science	42,000.0	42,000.0	42,000.0	0.0
Resolution of the government of Georgia N2176 07.10.15.	For financing the costs of the final burial of the holy body of St. Gabriel in Samtavro Monastery – by LEPL National Agency for the Protection of Cultural Heritage	65,000.0	65,000.0	65,000.0	0.0
Resolution of the government of Georgia N2175 07.10.15.	<u>Partial financing in connection of a gala concert</u> , George Balanchine's ballet "Symphony in Sea", Z. Paliashvili' opera "Absalom and Eteri" the opening ceremony of Opera and Ballet Theatre	644,805.0	644,805.0	466,886.1	177,918.9
Resolution of the government of Georgia N2718 18.12.15.	for the purpose of financing the <u>expenses of New Year's Eve events scheduled in 11 Georgian self-governing cities</u> (Telavi, Mtskheta, Rustavi, Gori, Akhaltsikhe, Kutaisi, Ozurgeti, Ambrolauri, Zugdidi, Poti, Batumi)	454,800.0	454,800.0	451,357.0	3,443.0

**Source:** “State Budget Performance Report: 2015 - GoG Contingency Fund allocations to the Ministry of Culture and

<http://procurement.gov.ge/getattachment/ELibrary/LegalActs/matsne-31252-57.pdf.aspx>.

<sup>16</sup> *Ibid.*

<sup>17</sup> Budgetary Code of Georgia, art. 28(1).

<sup>18</sup> *Ibid.*, 28(2).

<sup>19</sup> “State Budget Performance Report: 2015”, *Ministry of Finance (MoF)*, p. 24

[http://mof.ge/images/File/biuj2015/eng/chapter\\_III.pdf](http://mof.ge/images/File/biuj2015/eng/chapter_III.pdf).



There is no objective justification why procurement of this sort should be outside the law. The same applies to other exemptions from the PPL such as state companies - Georgian Post or Public Broadcaster. In other cases, certain types of procurement are exempt, such as public procurement related to renting of venues for meetings.

These exemptions are unsubstantiated and limit competition in public procurement. Reducing the number of exemptions would result in more savings for procuring entities and ensure greater transparency of procurement activities of state institutions.

### **Dispute Resolution Board**

The Georgian PPL ensures the existence of an independent review body that includes civil society representatives as its members. However, it has a few shortcomings:

1. The review body has an even number (6) of members (3 are SPA representatives, including the SPA chairperson, and 3 are civil society representatives that are selected by CSOs themselves), which creates possibilities for split votes, in which case, the chairperson is granted the final vote. In practice, a situation of split votes has never happened, however, theoretically without the odd number of the DRB members a dispute may be settled by a decision of one person;
2. The civil society members of the review body cannot attend each and every meeting (and choose to share the load by rotating on a weekly basis), since the review body has an ever increasing number of complaints to go through (this number increased from 68 in 2011 to 1,572 in 2015) and that its civil society members are not compensated for their work.
3. The eligibility criteria for civil society members of the DRB are restrictive. In order to be eligible for nomination, a candidate must hold a BA degree in either economy or law.<sup>20</sup> This results in many CSOs being unable to participate in the DRB elections, as CSO representatives without degrees in economy or law are not eligible to apply. An interview with SPA representatives showed that low participation in the DRB CSO elections is an issue and changing the eligibility criteria to only holding a BA degree without specifications may be the solution.

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<sup>20</sup> “Order No. 1 of the Chairman of the State Procurement Agency”, art. 4(6).

# Conclusion and Recommendations

The Georgian PPL is largely satisfactory and does not have any glaring shortcomings. The legislation ensures the efficiency and integrity of the public procurement system. The e-platform enhances the non-discriminatory character of the PPL and ensures the overall transparency of public procurement activities.

Over the years, performance of the public procurement system has been satisfactory. However, some areas and indicators need improvement such as the volume of failed tenders and share of direct procurement in procurement activities, number of exemptions from the PPL and ensuring aggregated data on procurements is collected and published. The following changes need to be made in order to ensure that the principles of transparency, efficiency, impartiality and competition are enhanced in the Georgian public procurement legislation as well as practice:

**Subcontractors** - The PPL must be amended to include the obligation to make information on subcontractors public on the e-platform as soon as they are known. The following information must be made obligatory to publish:

- Name;
- Country of Registration;
- Identification number;
- Address; Contact Information;
- Value of the sub-contract.

**Reduce the number of exemptions from the law** - The Georgian PPL must be amended to reduce the number of exemptions from the law. The Government of Georgia, in collaboration with the State Procurement Agency should remove exemptions on procurement made from contingency funds as well as by state enterprises from article Article 3<sup>1</sup> of the PPL.

**Completeness of the procurement database** – Relevant procuring entities, such as the Ministry of Internal Affairs of Georgia, Administration of the Government of Georgia, and Ministry of Defense of Georgia must publish all procurement contracts and ensure that their public procurements are transparent. The State Procurement Agency should facilitate the process and ensure that the direct procurement database available on the e-platform is complete and up-to-date.

**More detailed data** - The State Procurement Agency should continue its efforts of restructuring and standardizing data that has already been published, adding more detailed data fields to e-plans and contracts:

- E-plans should include detailed CPV codes and timeframe (month) of the procurements, as well as the location (region and municipality) of the procurement;
- Contract related information on the e-platform should have the following fields added:
  - Main CPV of the goods or services procured
  - Detailed CPV of the goods or services procured (further breakdown is possible by indicating what is being procured, e.g. chair, table, beverages, alcohol etc.)
  - Where applicable, country of origin of the product or service procured
  - Date of cancellation of the contract (where applicable)
  - Cause of cancellation of the contract (where applicable)
  - Changes to the duration of the contract (where applicable)

- Changes to the contract value (where applicable)
- Changes to the number of units of procured goods (where applicable)

**Aggregate, free to reuse data** - The State Procurement Agency must provide all stakeholders easy and automatic access to aggregated procurement data through the electronic procurement platform, which can be reused freely and in a way as these stakeholders see fit. The State Procurement Agency should continue its efforts towards making the data locked inside scanned documents and PDF files (for example contracts) available in machine-readable formats via adopting the Open Contracting data Standard.

**Dispute Resolution Board** - A remuneration scheme should be established for the civil society DRB members and the eligibility criteria for civil society candidates must be made less restrictive and more specific to the field of procurement.

**Contract performance module** - The contract performance module of the e-platform should be available to all users, including guest users. The SPA must ensure that this technical flaw of the e-platform is improved.