The Georgian story...

Comprehensive changes in the procurement system were made in 2010, when the Electronic Government procurement System (e-Procurement System) was introduced, alongside amendments to the Law on Public Procurement.

As a result, the public procurement process, ecosystem and legal landscape became considerably more transparent, encouraging fair competition and significantly reducing the risk of corruption



The first solution - 2011...

Another decisive step in reducing the risk of corruption was the establishment of a **Dispute Resolution Board (DRB)** by the SPA which provided any company the chance to appeal a tender award back in 2011.

Uniquely for the region and even in context of wider international practice, **representatives from civil society participated as a members of the DRB** in the adoption of its decisions. Such an approach ensured direct oversight by the civil sector over the decisions of the review body.

Overall, DRB over the years have enjoyed a high level of trust from businesses and CSO's.



Disadvantages

However, the institutional set-up of the DRB was perhaps somewhat disputable, as the international public procurement practice suggests institutional separation of procurement review function from functions of procurement policy making, monitoring and consulting on public procurement matters.



International commitments: EU/Georgia AA and FTA

AA/DCFTA ARTICLES

Article 145: Agreement of the Reform Strategy

Article 143(2):

"(a) Designation of an executive body at central government level tasked with guaranteeing a coherent policy and its implementation in all areas related to public procurement"

Article 143(2):

"(b) <u>Designation of an impartial and independent body</u> tasked with the review of decisions taken by contracting authorities or entities during the award of contracts"

Article 144: Basic Standards Regulating the Award of Contracts

Roadmap and Action Plan for the Implementation of the Public Procurement Chapter of the EU-Georgia Association Agreement, GoG decrees – 31-Mar-16 & 22-June-18 & 12-June-20

LEPL - State Procurement Agency of Georgia

Public Procurement-related **Dispute Resolution Council** (DRC), Amendments to PPL - 23-Dec-17 & 02-July-20

Legislative amendments to the PPL – 19-July-17:

- Equal treatment and proportionality;
- Performance criteria and functional specifications;
- New time limits;
- New types of procuring procedures.



IMPLEMENTATION

International commitments: WTO GPA

Georgia is in the accession process to the WTO Agreement on Government Procurement (WTO GPA).

One of the conditions for joining to the GPA is compliance with its minimum legal standards, among them **requirements of public procurement remedies.**

Since the EU Public Procurement Directives (including directives on remedies) are considered compatible with the WTO GPA, implementation of the former *de facto* guarantees compliance.



The Georgian story: Reform's agenda for 2020

Full reformation of the Georgian administrative review body establishment of the **Dispute** resolution / settlement council (DRC):

 Conducting an extensive consultations with international (EC DGs - GROW/TRADE/ECFIN/ NEAR, EU TWINNING, EUD, US DOC – CLDP, OECD-SIGMA, IFIs - EBRD, WB...) and national stakeholders (GoG, municipalities, business community, CSOs) on draft model/architecture & draft legal provisions.

 Discussing of comments, suggestions, remarks. Evaluation of alternative solutions. Reaching a difficult compromises...



Reformation pillars

The Government of Georgia (incl. PM Office, Administration of GoG, Ministry of Finance, Ministry of Economy, State Procurement Agency, National Competition Agency) completed actions under appropriate **5 dimensions of the reform**, regarding establishment of the **Public Procurement / Concessions / PPP related Dispute Resolution Council** and launching its operations:

- The **legal framework** the pieces of primary and secondary legislation has been adopted; the law has been adopted in July-20, the Rules of Procedure (*"Reglement"*) has been adopted on 31-Dec-20, the Statute of the National Competition Agency has been amended, the Statute of the State Procurement Agency has been amended, several legal acts has been annulled;
- The institutional set up all 5 DRC members are already appointed, 10 staff members are already contracted and started daily duties; Civil Service Bureau has been already concluded open contest procedure in order to select/hire 10 staff members - civil servants;
- The financial support has been guaranteed the needed budgetary funds has been allocated by the Ministry of Finance;
- The technological platform has been ensured newly developed e-modules and e-services are already tested and implemented into the Georgian Electronic Government Procurement System;
- Capacity building activities has been safeguarded newly elected DRC members and staff members are already familiar with amended rules and regulations, staff members and DRC members were trained on e-Procurement applications.



Adopted legal framework

- ✓ Adoption of the PPL
- ✓Adoption of 3 complimentary laws
- ✓ Adoption of the Law on Competition
- ✓ Adoption of 3 Government decrees (bylaws)
- ✓Adoption of 5 SPA's decrees (bylaws)
- ✓Adoption of 6 Prime Minister's decrees







Tribunal as an administrative review body

Tribunal in charge for settling public procurement related complaints in Georgia is the Dispute Resolution Council (DRC).

DRC is an impartial and independent administrative body established under the PPL with the aim of resolving disputes quickly, efficiently and fairly.

DRC is separate from all bodies / persons, is independent in its activities and obeys only the law.



A person interested in participation in procurement, a bidder or a supplier shall have the right to appeal a decision and/or action of a contracting authority/tender committee related to performance of public procurement to the DRC



No later than the following two working days from submitting an appeal, the DRC shall decide on the eligibility of the appeal

In situations where the appeal does not comply formally with the requirements of the PPL and there are no grounds to declare the appeal ineligible, the DCR shall give the complainant one working day to rectify the appeal

In total – 10 working days for a final decision



Public procurement procedure appealed upon finding the appeal eligible shall be suspended automatically, from the moment of finding the appeal eligible. After finding the appeal eligible, contracting authority/tender committee shall be obliged not to take a decision or perform an action within the timeframes of reviewing the appeal related to appealed public procurement/selection process procedures. Contracting authority/tender committee shall also be obliged not to announce a tender on the same subject-matter or terminate already announced repeated public procurement/selection process procedures.



The decisions of the DRC are published in an Electronic Module upon their adoption.

It is mandatory to implement the decision immediately.

The decision of the DRC can be appealed in the court.



Fees for the appeal

The submission of an appeal is based on a "deposit fee" approach

Appeal related to public procurement (except appeal on tender documents or any other decisions until the tender/bid submission deadline) – **2% of the estimated value of the public procurement**, but not less than 100 GEL (25 Euros) and no more than 1000 GEL (250 Euros)

Appeal related to a public-private partnership project – 0.15% of the estimated value of the project but not less than 22,000 GEL and no more than 150,000 GEL

The paid fee **is refunded** to the complainant only in cases where the appeal **is upheld, otherwise it is retained.** If, however, a complainant withdraws an appeal, the fee for filing an appeal is refunded





Institutional set up

DRC – 5 members

DRC – 1 chairperson

DRC – 1 deputy chairperson

DRC – 10 staff-secretariat members; 1 chief of staff



Operational guarantees

DRC members are remunerated.

Remuneration of the Chairperson is equal to the remuneration of the Chairperson of the District (City) Court

Remuneration of the Deputy Chairperson is equal to the remuneration of the Chairperson of the Board of the District Court

Remuneration of another DRC member is equal to the remuneration of the District Court judge



Operational guarantees

The National Competition Agency of Georgia provides premises, budget and support staff for the DRC.

The **DRC is financed from the Georgia state budget** allocations provided to the National Competition Agency, in the amount that *"ensures the performance* of the functions of the DRC and its independence (PPL)".



Electronic services

A special Electronic Module designated for the DRC is operating within the e-Procurement System.

Appeals made to the DRC, attached documents, decisions of the DRC, other review related materials, as well as other information defined by the *PPL* and the *Rules of Procedure of the DRC* shall be published on the electronic module.

The DRC Electronic Module is a **sub-system of the e-Procurement System**.

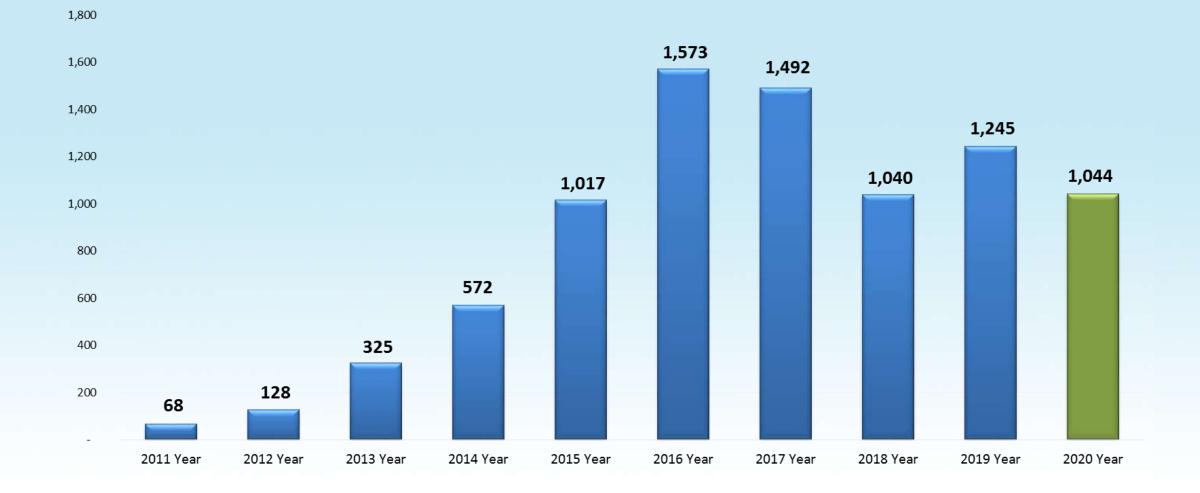
The **information on the Electronic Module is public**, except for the personal data.

At the moment of uploading the decision on tender results, **e-Procurement System automatically shares** that decision with tenderers and any interested user.



eDRC Module

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Already operational – Jan 2021...

The newly established Georgian Dispute Resolution Council is already operational from 04-Jan-21

In total 188 complaints were appealed during January-February, 2021

Among them, 38 – above EU monetary thresholds

On 08-Feb-21 the very first complaint was registered for **single-source procurement case**

