

საქართველოში სახელმწიფო შესყიდვებზე COVID-19 ზეგავლენა

ოთარ კიკვაძე

ბიზნესის ადმინისტრირების დოქტორი,
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აბსტრაქტი

ბოლო პერიოდში მსოფლიოში და მათ შორის საქართველოში გავრცელებულმა ვირუსმა COVID 19, რომელმაც პანდემიის სახე მიიღო, უპრეცედენტო მასშტაბის გამოწვევების წინაშე დააყენა ქვეყნები და მათი მთავრობები. ჩვენი კვლევის ინტერესი სწორედ ამ გამოწვევების საპასუხოდ საქართველოს მთავრობის მიერ სახელმწიფო შესყიდვებში გატარებული ღონისძიებებია სხვადასხვა შეზღუდვების სახით. კვლევის საფუძველზე დადგინდა, რომ ამ სფეროში დაწესებულმა შეზღუდვებმა შედეგის თვალსაზრისით დაბალი ეფექტურობა აჩვენა, რადგანაც შემცირებული ელექტრონული ტენდერების ხარჯზე მივიღეთ გამარტივებული შესყიდვების გაორმაგებული რაოდენობა, დროში განელილი სახელმწიფო შესყიდვის პროცედურები და შესაბამისად დაგვიანებით მიღებული შესყიდვის ობიექტები, რომელიც უმეტესწილად საზოგადოებრივ სიკეთეს წარმოადგენს. გამომდინარე იქედან, რომ პანდემია გავრცელების აქტიურ ფაზაში იმყოფება და მისი შემცირების/შეჩერების მოლოდინები მინიმუმ მომდევნო წლის გაზაფხულამდე არასაიმედოა მნიშვნელოვანია გადაწყვეტილების მიმღებ პირთა მიერ ფორსმაჟორული სიტუაციის საპასუხოდ სახელმწიფო შესყიდვების ნაწილში სხვადასხვა რეგულაციებისა თუ შეზღუდვების შემოღებისას გათვალისწინებული იქნას წინამდებარე კვლევის საფუძველზე შემუშავებული რეკომენდაციები.

საკვანძო სიტყვები: პანდემია; სახელმწიფო შესყიდვა; გამოწვევა.

IMPACT OF COVID 19 ON STATE PROCUREMENT IN GEORGIA

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Abstract

The recent outbreak of the COVID 19 virus around the world, including Georgia, has escalated into a pandemic thus posing unprecedented challenges to countries and governments. Our study focuses on the restrictive measures taken in response to these challenges by the government of Georgia in the field of state procurement. The study found that restrictive measures were less effective, as reduction of electronic tenders led to a doubled number of simplified procurement, overextended procurement procedures and, as a result, delayed procurement items, which in most cases are objects of public convenience. Given that the pandemic is still in an active phase and the prospects for its slowdown / stopping are unreliable at least until the spring of next year, it is important that decision-makers, introducing various rules and restrictions in the field of public procurement in response to force majeure, considered the recommendations developed on the basis of this study.

Keywords: pandemic, government, procurement, challenge.

1. Introduction

The Covid-19 virus, discovered in China at the end of 2019, spread throughout the world in a few months and took the form of a pandemic. Due to the speed of its spread, most countries in the world met the pandemic unprepared, which, consequently, led to an obvious result – by the end of November 2020, more than 62 million people were infected and more than 1.45 million died¹. The pandemic naturally had a negative impact on both the economies of countries and the global economy in general, which continues to this day, as the virus is still in an active phase of spread and the prospects for access to a vaccine against the virus remain unclear. At this stage, it is difficult to predict the total losses, although various international organizations and financial corporations estimate a decrease in global economic growth of at least 2.5%, which, in turn, is tantamount to a loss of about \$ 1 trillion².

During the pandemic, in many countries, including Georgia, a state of emergency was declared, a curfew was imposed, various restrictions were introduced, anti-crisis plans were developed, etc. Restrictions have also been extended to state procurement in Georgia, and this is an issue discussed below, including the mechanism used and its effectiveness, and the impact of the restrictions on state procurement.

2. State Procurement in Georgia

The state procurement system is one of the most important tools of public finance expenditure, accordingly, the proper functioning of the state procurement system significantly determines the state of public finances in the country, the level of corruption, the competitive environment, business development opportunities, etc.

Improving and developing state procurement is an obligation under the Deep and Comprehensive Free Trade Area Agreement (DCFTA) between Georgia and the European Union and accordingly the process continues permanently. Fundamental reform of the state procurement has been carried out in Georgia since 2010, which is coordinated by the LEPL State Procurement Agency. As part of the reform, significant changes were made, including to legislation, procurement instruments, monetary limits in tune with procurement instruments, the classifier of the determinant of unity, which includes 272 units of unified CPV³ codes, also, a unified electronic state procurement system was created, through which all the main processes and documentation related to state procurement are presented in an electronic system – the so-called „online mode“ (available to all interested parties), etc.

The amount of public finances spent through public procurement is growing every year. For example, in 2019, over 30% of the consolidated budget (approximately 11% of GDP) was spent on public procurement⁴, see Chart 1.

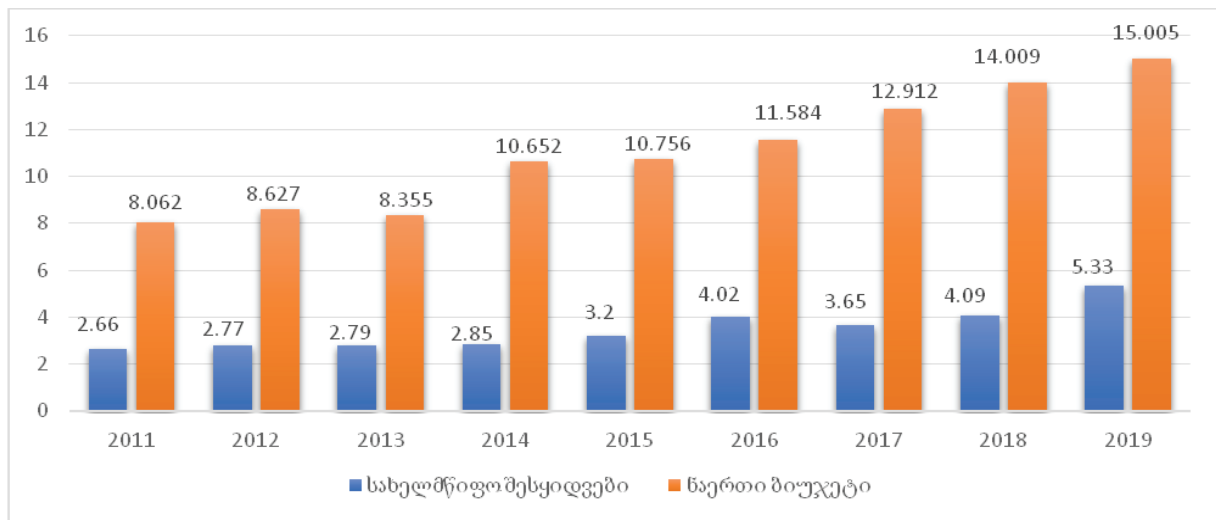
¹ <https://www.worldometers.info/coronavirus/>

² <https://www.entrepreneur.com/article/348113>

³ Common Procurement Vocabulary (CPV) under EU Directive # 213/200

⁴ <https://budgetmonitor.ge/ka/purchases>

Chart No 1 Comparison of the cost of total state procurement contracts and consolidated budget volumes by year (billion GEL)



Source: State Procurement Agency; Ministry of Finance of Georgia.

As already mentioned, the volume of state procurement in the budgetary parameters of the country is quite high, and therefore, correct and effective regulation of this area is necessary, on the one hand, to ensure rational spending of public funds, and on the other, to create a healthy competitive environment, which is a key prerequisite for business development.

3. Impact of COVID 19 on State Procurement

The restrictions developed and imposed by the government in response to Covid 19 in Georgia have naturally affected public spending and, consequently, the public procurement process. Although some restrictions were introduced even before the spread of the pandemic, in particular: On June 9, 2016, the Government of Georgia adopted Resolution No. 252 „On some measures to be taken in connection with state procurement“, according to which organizations participating in state procurement were not allowed to conduct electronic procurement of the items identified by classification codes specified in the same Resolution without prior agreement with the Government of Georgia. The Resolution included 26 CPV codes of state procurement classifiers, and this list included procurement items such as mobile phones, computers, furniture, automobiles, various types of equipment, etc. The Resolution provided for the limitation of improper spending of public finances – mainly on „luxury“ items – by procuring entities, and if any procuring entity decided to purchase expensive equipment or furniture and etc., under a tender procedure, it was required to provide appropriate justification to the Government of Georgia, obtain a permit and only then announce a tender. Presumably, the adoption of this normative act was based on examples of misappropriation of public finances by various procurement entities.

In this regard, an approach was developed, according to which the government issued a new resolution at the beginning of each year, and, accordingly, since 2016, the Resolution has been amended several times, during which the classification annex has been expanded, the form for filing with the Government Office has been improved, the time frame for issuing permits has been determined, etc. Procuring entities have

been instructed to submit market research results, along with justifications, with bids from at least three potential suppliers, etc. Resolution No. 650 of December 25, 2019, „On some measures to be taken in connection with state procurement“, set out the 30 CPV codes of the classifier for state procurement to be conducted in 2020, which required prior approval. In addition, the procuring organizations were singled out, namely:

- Organizations, procurement of which made under the CPV procurement codes set out in the Resolution required the approval of the government (budgetary organizations under the control / accountability of the Government of Georgia / Prime Minister; Georgian ministries and budgetary organizations subordinate to them, as well as legal entities of public law, appointed by the Prime Minister of Georgia);
- Organizations that have been instructed to submit relevant information about the procurement item to the Ministry of Regional Development and Infrastructure of Georgia before the start of state procurement under the CPV codes specified by the Resolution (municipalities and legal entities established by the municipality);
- All other procuring organizations, that were ordered to submit information to the Georgian government prior to procurement under the CPV codes.

By Resolution No. 210 of the Government of Georgia of April 1, 2020, amendments were made to Resolution No. 650 of 2019, according to which the regulation of state procurement has been radically changed and placed in a strict framework. In this case, the Resolution identified 43 CPV procurement codes, which were exempted from permission and preliminary agreement, while all other CPV codes of the procurement classifier – 229 units – were subject to an authorization procedure.

Such a radical change introduced by the Georgian government was naturally caused by COVID 19, which by that time was already widespread in Georgia, because of which the government was forced to limit the spending of public finances as much as possible and make them purposeful. The Resolution No. 454 of the Government of Georgia of July 21, 2020 was amended again (which remains in force today) and the procuring entities had to act under the Resolution No. 650 of 2019, in accordance with the new Annex of CPV codes to the same amendment, which this time includes 75 CPV codes of the state procurement classifier.

It should be noted that the radical restriction in force from April 1 to July 21, 2020 revealed to have certain shortcomings, namely:

- **Delayed preparatory procedures required to obtain a permit**

The preparation of permit documentation is in some cases problematic for certain organizations, especially when it comes to the market research procedure, according to which the procuring entity seeking an authorization must provide an invoice from at least 3 potential suppliers, which is often not possible as potential suppliers are reluctant to cooperate with the procuring entities when the list of procurement items is particularly extensive. This procedure particularly delays the whole process.

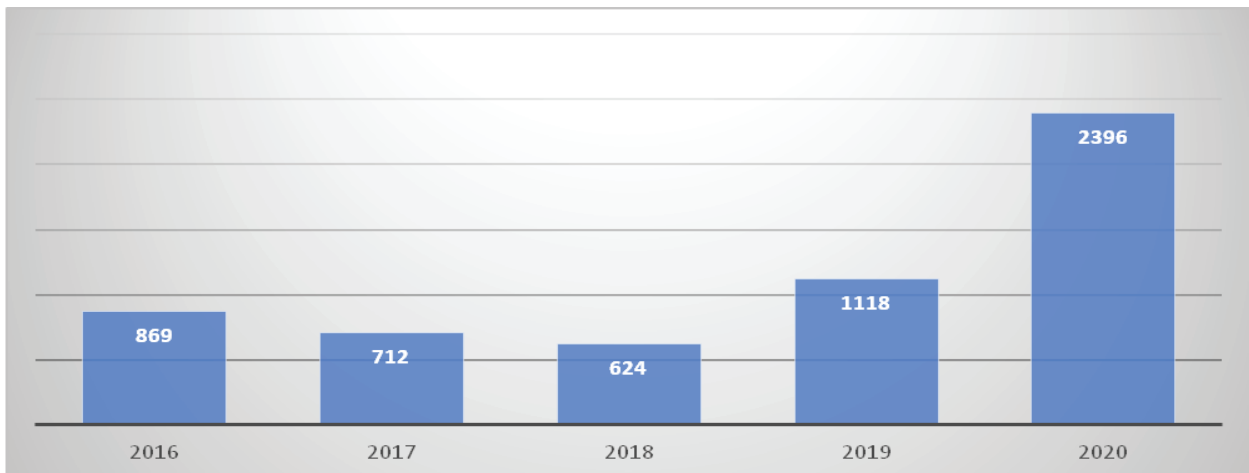
- **Violation of the deadline for obtaining a permit;**

Since the entry into force of the above amendment, there have been a number of cases where the deadline for issuing a procurement permit (10 working days) has been violated. Which was likely due the increased number of permit requests from procuring organizations. Violation of the deadlines for issuing permits, in turn, extended the procurement period, and in some cases, citizens received late or could not receive services or other social gains provided by the state;

- **Increase in the number of urgent simplified purchases;**

As mentioned above, the restrictions imposed by the government Resolution apply only to procurements made through electronic procedures (electronic tender) and do not apply to simplified procurements. In turn, simplified procurement is one of the forms of state procurement, which involves the negotiation of procurement with one person within the monetary threshold defined by law (in case a procuring entity procures uniform items worth up to GEL 5,000 per year), however, in addition to the above case, the simplified procurement may be used in other cases as defined by law. In our case, particular attention should be paid to simplified procurement made due to an urgent necessity. The current legislation stipulates that an urgent necessity is a case when there is a real threat to the functioning of the procuring entity and which could not have been predetermined, and / or the occurrence of which was not caused by a procuring entity, or which could significantly damage the Georgian state and / or public interests, or the property of the procuring entity.¹ Simplified procurement on this basis, in turn, requires the prior approval of the State Procurement Agency or, in extreme cases, when the urgency of procurement does not leave room for a preliminary agreement, the procuring entity first conducts the procurement and then coordinates this circumstance with the State Procurement Agency. It is noteworthy that the agreement with the State Procurement Agency is made through the corresponding module of the Unified Electronic System of Public Procurement (SMP) and the response to the application is given within 3 working days. The procurement made by the procuring entities during the restriction period were precisely the urgent purchases (April 1 – July 21, 2020), see Chart No 2.

Chart No 2. Dynamics of urgent procurement for the study period (April 1-July 21) 2016-2020.



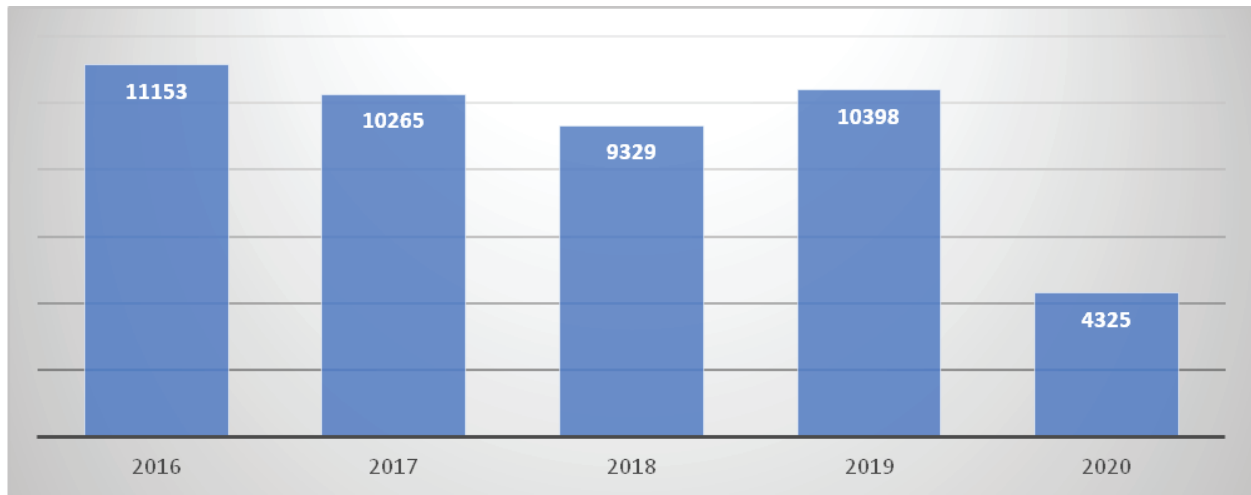
Source: www.procurement.gov.ge

As demonstrated by the chart, during the study period (April 1-July 21) in 2020 2396 urgent procurement agreements were concluded, which exceeds the corresponding indicators of the previous year by at least 50%.

As for the number of tenders announced in the same period by year, it is as follows (see Chart No 3).

¹Order # 13 of the Chairman of the State Procurement Agency “On defining the simplified procurement criteria and the approval of the rule for conducting simplified procurement”, Tb. 2015.

Chart No 3. Dynamics of the number of announced electronic tenders for the study period (April 1-July 21) 2016-2020.



Source: www.procurement.gov.ge

The given chart demonstrates that the number of electronic tenders for the study period in 2020 is reduced by about 60%.

Summary

Taking into account the above, it can be concluded that the restrictions imposed by the state for a specific period on public procurement, which meant limiting the use of e-procurement means by prior agreement, turned out to be less effective for the following reasons:

- Due to the large number of applications from procuring organizations resulting from the imposed restrictions, the authorization terms were often violated, which especially created problems for those procuring organizations that did not participate in the electronic documents management program (for example, limited liability and joint stock companies, non-profit legal entities based on state equity participation, etc.);
- In some cases, due to bureaucratic barriers, procuring entities have been forced to avoid prior agreement with the government on e-procurement and postpone procurement as much as possible, and in case of emergency, use a simplified urgent procurement form and, consequently, enter into an agreement not with the government, but with The State Procurement Agency;
- During the period of the imposed restrictions, the spending of financial resources by procuring organizations may have decreased to some extent, however, as the statistics show, urgent simplified procurement has doubled at the expense of the reduced tenders;
- Simplified procurement during this period would not have saved as much as a procuring entity would save under an electronic tender.

Recommendations

- Develop a dedicated module on the website of the Government of Georgia to apply for permits and receive a response.
- Strictly define the terms for issuing a permit and change the period of validity of the permit to no more than 5 working days instead of 10 working days;
- Create a market research module in the unified electronic public procurement system, which, on the one hand, will simplify the process of procuring organizations, and on the other hand, identify bona fide potential suppliers who are willing to cooperate, and in this case, the procuring organization will not have to look for potential suppliers and will not depend on their „goodwill“ to participate in the market research phase. This will be useful not only in this case, but also in case of using any means of procurement;
- The Government of Georgia shall determine the methodology for adopting the above-mentioned Resolution, namely, on what basis the approach to adopting the Resolution changes annually, on what basis the classifier codes (CPV) are changed, etc.

Taking these recommendations into account will not only enable us to regulate public spending through state procurement in a pandemic force majeure situation, but in all other cases make public spending even more purposeful, rational and transparent.

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