

Analysis of procurement carried out by the Georgian Ministry of Defense in 2004 by Irakli Sesiashvili

Funding

According to the 2004 Budget, the Ministry of Defense was allocated 173.89 million lari, including 67.53 million lari for “Other Goods and Services,” and 52.85 million for capital expenses. From that, the Department of Procurement of the Ministry of Defense received 24.72 million lari of funding for Other Goods and Services, in addition to 490,700 lari from the Fund for Reform and Development.

Accountability and Transparency of Financial Activities of the Ministry of Defense

The basic problems at the Ministry of Defense were due to poor management procedures. This was reflected in public procurement. As a result, financial resources were used inefficiently and irrationally, and legislation was violated. This created obstacles in the normal functioning of the Ministry and armed forces, and impeded reform efforts. From the financial analysis on spending in 2004, it is clear that these problems were caused by subjective factors and possibly served the interests of some public servants. According to the Law of Public Procurement, it is the obligation of all purchasing bodies, including the Ministry of Defense, to plan, elaborate and approve a Public Procurement plan. The law states that the specified Plan of Public Procurement should be approved by the head of the purchasing body no later than 20 days after the adoption of the state’s budget. The Ministry of Defense’s Plan of Public Procurement was formed at the beginning of 2005.

Public Procurement in 2004 was carried out with significant violations of the law. In 2004 the Procurement agency indicated that it did not get either reports on Public Procurement, or the Final Plan of Procurement from the Ministry of Defense.

As a letter by Giorgi Meladze, the Head of the Agency of Public Procurement stated, the actual amount for procurement received by the Ministry of Defense was equal to 3,158,520.89 lari which did not tally with the data provided by the Treasury Service of the Ministry of Finance. The difference amounted to 7,986,232.37 lari. As a result of the comprehensive inspection at the Ministry of Defense, the violations have been discovered, and were reflected in the Act of the Chamber of Control.

Competitive Tender

The Law on Public Procurement defines the rules for Public Procurement. Which rules will be adopted depends on the tendered price for procurement. Given the size of Public Procurement, all of them should be carried out through tenders. However, in 2004 procurement in the Ministry of Defense was, in the majority of cases, carried out on the basis of individual agreements with physical or legal entities, regardless of the price of the procurement.

In the last three years, 12 tenders were announced whereas in 2005, 23 tenders were announced (22 open domestic and one international). Looking at the procurement plan for 2004, at least 150

tenders had to be announced. In 2005, seven price quotations were carried out.

Tenders held:

2002 – 3 tenders

2003 – 7 tenders

2004 – 2 tenders

The study showed revealed that procurement of the goods or services at any price was performed mainly through negotiating with one organization. Rules of Public Procurement, the status of tender (closed or open) and the price quotation were ignored.

In 2004 the Chamber of Control learned that the Agency of Public Procurement did not approve the majority of requests from the Ministry of Defense to carry out procurement because of the absence of the relevant documented evidence of carrying out the procurement. In spite of this the Ministry of Defense signed the contract with suppliers without approval from the Chamber of Control.

For example, on October 29, 2004 the First Deputy Minister of Defense Paata Gaprindashvili requested that the Agency of Public Procurement carry out procurement worth 500,000 lari. The procurement had been held before holding a tender, on the basis on negotiation with one organization involved, due to extraordinary circumstances. The agreement had been signed by the Department of the Procurement before the official approval from the Agency of Public Procurement was received.

Amounts specified in both contracts (about 220,000 lari) were debited on October 28, 2004, the day before the official appeal to the Agency of Public Procurement. The terms of the Agreements did not show evidence of a bank guarantee, which violates the requirements of Article 18, Regulation 329, Law on Public Procurement.

In 2004 two tenders were held and 25 agreements were signed. Below is the list of violations, revealed by the Chamber of Control, which took place during tenders:

- Control mechanisms were not applied during the execution stage of the contract
- In April 2005 instead of supplying goods worth of 296,600 lari specified in the contract signed with 11 different suppliers, JSC “Krtsanisi Bread” supplied bread worth of 234,200 lari. The amount supplied was 93 tons less than specified in the contract.
- Significant violations of the Law were committed by the Tender Commission of the Ministry of Defense. The materials for tenders must be prepared in accordance with detailed rules specified by the legislation. The Chamber of Control revealed drawbacks in the database, rules on participating in the tender and description of technical conditions.
- The Tender Commission did not consider infringements of the Law by participants. JSC ‘Ramta’ and ‘Vazi’ submitted certificates showing that they were not registered for VAT, instead of submitting certificates to prove that they were not in debt, as was requested by the application procedure. In another example David Labadze, a private entrepreneur, showed a certificate that he did not have a criminal record. This certificate was submitted by the

Regional Department of Internal Affairs in Kashuri. However the responsibility to issue such a certificate belongs to the Information Division of the Ministry of Internal Affairs.

- Decisions made by the Tender Commission were not trustworthy. According to the Article 15, Paragraph 9, Law of Public Procurement the candidate is awarded a contract if it had been chosen based on an absolute majority of votes of Tender Commission members. Indeed, decisions were made based on the points accumulated by individual candidates.
- Contractual agreements signed with some suppliers did not bear the stamp of the Department of Procurement, or documents simply were not signed at all.
- Assessment was made incorrectly during the Tender. The evidence is derived from the tender proposals of individual candidates. One private entrepreneur, Z. Taganashvili, offered fish for 2.55 lari and another businessman T. Koguashvili, offered it for 2.35 lari. The Tender Commission gave nine points to Taganashvili and only 6 points to Koguashvili.

There are many cases when the Ministry of Defense held a tender, but signed a contract with a firm that did not win the tender. Proposals submitted by 'Pari Ltd' got a negative assessment from the Commission due to the high price of goods; however the Department of Procurement considered them appropriate.

13 tender proposals out of 33 submitted on purchasing agricultural products got negative assessment. 9 tender proposals were not discussed because the application documents were not submitted. Obligations claimed by tender winners were not met for 267.9 thousand (21.5%) lari. Because of this reason, the contract was signed in negotiation with one organization.

Contracts

An inspection conducted by the Chamber of Control discovered that in 2004 the Department of Procurement signed 679 contracts for 38.92 million lari. This included 654 contracts for 36.44 million lari by negotiation with one organization, and five contracts with the suppliers through two open tenders for 2.49 million lari (6.4 percent of the total contract value).

Analysis of the contracts signed in 2004 shows the public procurement process did not follow procedures set out by the Law on Public Procurement.

The Heads of the Department of the Procurement and a supplier signed a contract worth 116,025 lari. According to the Georgian legislation, procurement for such an amount should have been carried through an open tender procedure. But in this case the supplier was chosen based on a 'business proposal'. There were numerous violations in the specifications attached to the contract, such as an absence of necessary information about the goods (terms of storing, package, quality standard). This contract was not recognized by the legislation of Georgia.

The tender was won by the 'Georgian Products Ltd' specializing in butter production. However the company stated later that it was not able to meet the obligations stipulated by the Contract. By the Rule of the Provision of Public Procurement, the company should have been charged one percent of the total amount of the contract, 1,512 lari, but this did not occur. The next tender was held for a different good, but this tender too violated the law, as it involved only one organization in the negotiating process.

Construction and Capital Expenditures

According to the Decree # 166 of July 07, 2004 issued by the Minister of Defense, the Department of Procurement and the Department of Infrastructure had to sign a preliminary agreement with construction organizations envisaging the cost estimates. The Agency of Public Procurement ignored this message.

The cost of maintenance according to 34 contractual agreements amounted to 11.24 million lari. Contractual agreements for the amount of 5.39 million lari were signed with executors.

This capital maintenance was carried out on the basis of negotiation with only one organization. This is against the Law on Public Procurement. This contract did not meet the conditions spelled out in Paragraphs 1 and 2 of the Ministerial Decree # 166 of July 07, 2004. The maintenance work was not finished till autumn as was required by the contract. From July 24th till December 2nd, Ministry of Defense signed 18 contracts for construction works but negotiated with one person. The overall cost of the contracts signed amounted to 572.8 million lari. However according to the price of the contracts, four open and 12 closed tenders should have been held.

The justification against holding the tender was artificial, and against the Law on Public Procurement.

The Chamber of Control reported that by January 2005 no construction works had met the deadline.

Pricing

Two types of prices were chosen in order to discover the price of the goods purchased by the Ministry of Defense: price for imported goods and the market price reported by wholesalers in Tbilisi. The market price was gradually increasing in the first two quarters of the year, but it leveled out in the second half of the year. It is seen from the table below that goods were purchased at relatively higher prices in the first part of the year compared to the second part.

Production	month	1	2	3	4	5	6	7	8	9	10	11	12	Average market prices
Chicken legs		3	2.86	2.8	2.7	2.7	2.65	2.6	2.287		2.28	2.31	2.34	2.45
Lentils		1.5	1.44	1.6	1.6	1.36		1.12	1.1	1.04	1.04	1.06		0.96
Rice		1.3		1.02		0.97	0.92	1.1	1.1	1.05	1.05	1.05		0.80
Sugar		0.9			4.2	0.78		0.78	0.77	0.83	0.83	0.83	0.85	0.76
Butter		5	5	4.87		4.4	4.31	4.25	4.25	3.7	3.7	3.68	3.68	3.36
Noodles		1.18		1.18	1.85	1.01	1.01	0.98	1.01		0.98	0.93	0.99	0.75
Oil		2.4		1.85		1.85	1.9	1.95	1.96	2.02	2	2		1.7-2.0
Salt				0.25		0.25	0.3		0.3	0.25	0.25	0.25		0.2
Fish				2.82			2.9				2.48	2.49	2.5	2
Margarine											2.23	2.23	2.23	1.9

The quality of the purchased goods as a determinant of price paid for those goods should also be taken into consideration; the Ministry of Defense did not carry out quality control over the goods by and relied on reported information. The real quality usually did not correspond with what was

reported. The Ministry of Defense purchased goods that were not available on the Georgian market because of their low quality (for example, Ukrainian sugar). It is difficult to discover the real market price of those products.

It was revealed that the Ministry of Defense had purchased military uniforms from 'Spa Ltd' for 110 lari each while the market price for each uniform did not exceed 55 lari (30 USD).

Debit Debts

For years contractors have been in debt to the Ministry of Defense. The practice to transfer funds in advance to supplier without having a bank guarantee was quite common. Lots of goods mentioned in the contract have not yet been provided. Given this situation, the Department of Procurement accumulated 6.3 million lari of credit debts. As of April 2005 the debit debts amounted to 5.5 million lari.

The Chamber of Control reported that such case was revealed when a private entrepreneur G.Beruashvili got paid twice, e.g. from the state budget and from the Development Fund.

The private enterprise of G.Beruashvili received payment in advance in the amount of 80,000 lari. The enterprise is still a debtor.

The Foundation of the Development and Reforms

The chamber of Control revised the legitimacy of expenditure made by the Foundation of the Development and Reforms. The Foundation is a legal entity in Public Law. Its sources of revenue are:

- 1 State budget
- 2 Funds received from international organizations
- 3 Donations from individuals and organizations
- 4 Other sources

According to the Article 6 of the Law On the Public Procurement and Article 5 of the Decree On the Conducting the Public Procurement the following were a subject to the open tender:

- 1 Fuel – 253,000 lari
- 2 Spare parts – 97,300 lari

The following were a subject to the closed tender

- 1 Computer and Office Equipment – 36,000 lari
- 2 Vehicles – 77,200 lari

According to the Regulation 'Rules of Implementing the Public Procurement,' the Tender Commission must give notice on holding public procurement to not less than to five organizations. Holding public procurement in any other way is against the Law.

Conclusion

It is clear that management processes must be improved so that clear procedures for carrying out procurements legally are developed. Without transparent procurement, all public purchasing will be viewed with suspicion by the population.