

# **SIMPLIFIED STATE PROCUREMENT**

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## INTRODUCTION

On April 20, 2015 the Government of Georgia adopted the Decree on Approval of the Action Plan of the National Anti-Corruption Strategy and the Implementation of the National Anti-Corruption Strategy 2015-2016.<sup>1</sup> One of the priorities of the National Strategy is to ensure transparency in the state procurement sphere and reduce corruption risks. As an important indicator for the implementation of the above, the Government decided to decrease the number of simplified procurements.<sup>2</sup> The third round of the OECD monitoring report,<sup>3</sup> also discusses the reduction in the methods/basis of simplified procurement.<sup>4</sup>

The changes for implementation of simplified state procurement are also mentioned in the European Commission's third progress report on Georgia's implementation of the "Action Plan on Visa Liberalization".<sup>5</sup> The above report deals with Georgia's fulfillment of the second phase of the "Action Plan on Visa Liberalization". According to the recommendation of the European Commission,<sup>6</sup> the Georgian authorities should ensure that the rules setting out criteria for dispensing with the tendering process for public procurement contracts clearly define the precise circumstances under which this may be done and the procedures to be followed. These procedures should require public notice and the right of objectors to be heard. The decision to dispense with tendering should require independent approval by the State Procurement Agency.

On 9 July 2015, the Government of Georgia submitted to the Parliament of Georgia a draft law on the amendments to the Georgian Law on "State Procurement".<sup>7</sup> According to the amendments, a procurement organization shall obtain consent from the State Procurement Agency for conducting a simplified procurement on the basis/methods provided for in the law.<sup>8</sup> An application for obtaining the consent shall be submitted to the Agency by a procuring organization through the Unified Electronic System of State Procurement. In addition, according to the draft law, the Chairman of the Agency shall determine in a subordinate normative act the specific rules and conditions for agreeing a simplified procurement with the Agency.

The Parliament of Georgia adopted the draft law with the third hearing on July 24, 2015. The new regulation entered into force on November 1 of the same year.

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<sup>1</sup><https://matsne.gov.ge/ka/document/view/2818704>

<sup>2</sup> 2015-2016 Action Plan for Implementation of Anti-Corruption Strategy (2015-2016): "7.1.1.1. To prepare proposals and submit to the Government of Georgia / Parliament for the reduction of exemptions and simplified procurements in the procurement legislation"

<sup>3</sup><http://www.oecd.org/corruption/acn/GEORGIAThirdRoundMonitoringReportENG.pdf>

<sup>4</sup>Remove possibility for the President or the Government to qualify procurement as a simplified excluding it from the e-procurement, except for cases of natural disasters and other similar emergencies.

<sup>5</sup>[http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/international-affairs/general/docs/third\\_progress\\_report\\_on\\_the\\_implementation\\_by\\_georgia\\_of\\_the\\_action\\_plan\\_on\\_visa\\_liberalisation\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/international-affairs/general/docs/third_progress_report_on_the_implementation_by_georgia_of_the_action_plan_on_visa_liberalisation_en.pdf)

<sup>6</sup>„Ensure that the rules setting out criteria for dispensing with the tendering process for public procurement contracts clearly define the precise circumstances under which this may be done and the procedures to be followed. These procedures should require public notice and the right of objectors to be heard. The decision to dispense with tendering should require independent approval by the State Procurement Agency.“

<sup>7</sup><http://www.parliament.ge/ge/law/9812/23861> ;

<sup>8</sup>The Law of Georgia on State Procurement, Article 10<sup>1</sup>(3)(a-d);

On 17 August 2015, the Chairman of the State Procurement Agency approved the “Procedure for Determining Simplified Procurement Criteria and Rules for Conducting Simplified Procurement”<sup>9</sup>, which also became effective on November 1, 2015. The Procedure sets forth the principles and criteria for making decisions on implementation of simplified procurements, decision-making rules for a procuring organization on simplified procurement and rules of agreeing this decision with the State Procurement Agency, as well as the issues related to awarding and execution of simplified procurement contracts.

The SMP module on the website of the State Procurement Agency gives users an opportunity to keep track of applications submitted on simplified state procurements and responses provided by the Agency.

## RESEARCH GOALS, METHODOLOGY AND PERIOD

This research had five main goals:

- 1) To analyze the implementation of the abovementioned model (SMP) in practice;*
- 2) To identify the number of simplified procurements conducted during the monitoring period and their comparison with the same period of the previous year;*
- 3) The amount of money provided for implementation of procurements;*
- 4) The number of procurements consented and rejected by the Agency;*
- 5) To identify whether the methods/basis for simplified state procurements have been reduced.*

Besides, the purpose of the research was not to evaluate the decisions made by the Agency related to simplified state procurements.

For the purposes of the research, the Georgian Young Lawyers' Association (GYLA) studied legislative acts and subordinate normative acts concerning simplified state procurements, got familiar with the OECD and EC reports, examined and analyzed the SMP module available on the Agency's website. Also, for the purpose of the research, data were requested from the Agency in the form of public information.

This research presents the results of one year monitoring of simplified state procurements, accordingly, as the new Procedure became effective on November 1, 2015, ***the 1st of November 2015 was determined as the beginning of the monitoring period and the 1st of November 2016 as the completion date.***

As for the amendments to the Law On State Procurement, GYLA was observing the processes until the end of 2016, as according to the Action Plan, in December the State Procurement Agency was required to submit to the Government / Parliament of Georgia the developed initiatives on reduction of exemptions and simplified state procurements in the Law on State Procurement.

## KEY FINDINGS

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<sup>9</sup>[http://www.procurement.gov.ge/getattachment/ELibrary/LegalActs/gamartivebuli\\_Sesyidvis\\_Catarebis\\_wesi.pdf.aspx](http://www.procurement.gov.ge/getattachment/ELibrary/LegalActs/gamartivebuli_Sesyidvis_Catarebis_wesi.pdf.aspx)

In the reporting period, several important findings have been revealed, in particular:

- ***In 2016, the total value of procurements consented by the Agency was much higher than the total value of simplified procurements which the Agency indicated in the annual report 2015.***
- ***The State Procurement Agency has submitted neither the initiative to the Government of Georgia, nor a draft law to the Parliament, which would reduce the methods/basis of simplified state procurements or exemptions in the Law On State Procurement;***
- The total value of the consents issued by the Agency concerning the applications of procuring organizations (except for "urgent necessity") exceeds ***billions of GEL*** in total;
- Among the applications submitted by procuring organizations, the applications on procurements conducted under "urgent necessity" prevail;
- The majority of applications by categories submitted by procuring organizations are related to provision of complete or partial construction works or civil construction works;
- ***The Agency has consented to more than 90,000,000 GEL applications on procurements under "Exclusive Rights", with more than 36 million GEL for security services, where the supplier is the LEPL Security Police Department;***
- ***In procurements under urgent necessity, procuring organizations are not obligated and, in majority of the cases, do not specify the estimated value of the procurement.*** The above fact reduces transparency and without this indicator compromises the objectivity of the Agency's assessment;
- There is a risk that a purchaser may pay unrealistically high price during procurements. The Agency obliges a procuring organization to indicate the quantity of goods, the volume of services or construction works to be procured, which is required to resolve the situation, however, as indicated above, ***does not oblige to specify the estimated value, which may lead to a purchaser to pay considerably high price for the same quantity or volume of goods / services.***
- For the procurement of the two most demanded goods, fuel and provision of complete or partial construction works and civil construction works, procuring organizations generally indicate "urgent necessity," as the method/basis of the procurement.
- The total value of the applications agreed after conducting procurements under urgent necessity, which the agency consented accounted for 9,574,438 GEL in total.
- During the reporting period neither the Agency nor procuring organizations responded adequately to the cases when procurement was conducted under urgent necessity ***prior to obtaining the consent from the Agency and later the Agency recognized such procurement as unlawful.***
- The total value of the applications submitted for avoiding quality deterioration, which the Agency consented to accounted for more than 15,000,000 GEL;
- To date, ***the range of procurement value*** for conducting the procurement for the purpose of holding an event of state and public importance without hindrance within the limited timeframe has not been determined;
- The total value of the applications submitted for the procurements for the purpose of holding an event of state and public importance without hindrance within the limited timeframe, which the agency consented to totaled 329,163,486 GEL, 272,191,775 USD and 12,700,254 Euros.

## NEW PROCEDURE FOR SIMPLIFIED STATE PROCUREMENT

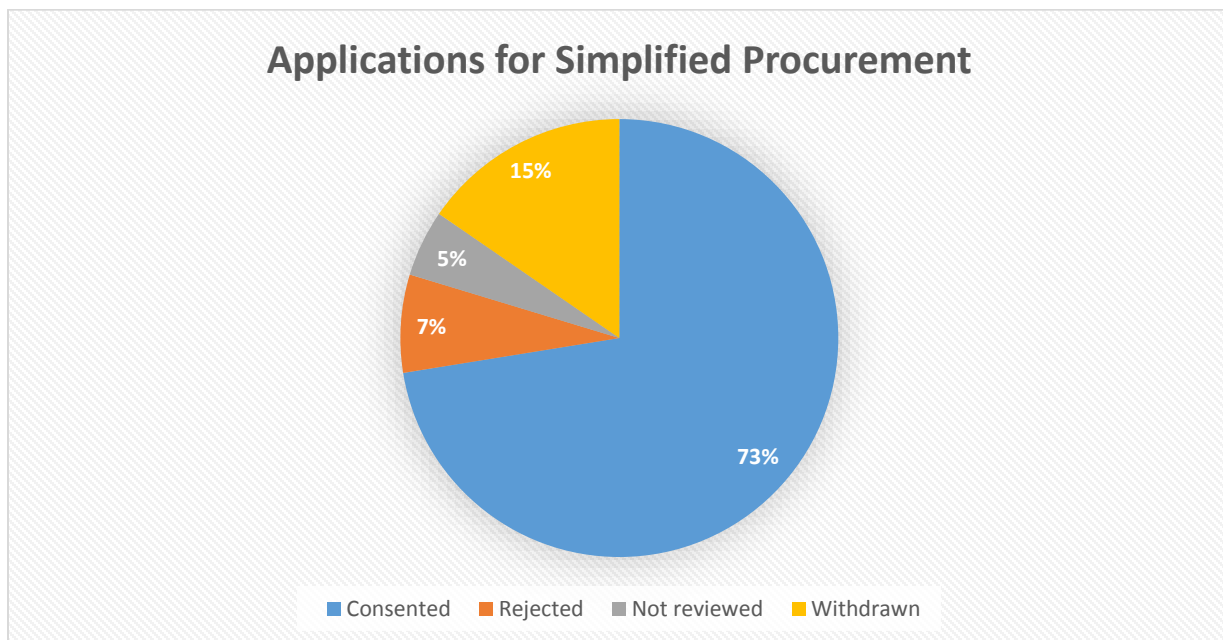
According to the new Procedure,<sup>10</sup> which entered into force on November 1, 2015, a procuring organization shall be required to obtain the Agency's consent for conducting a simplified procurement in the following cases:

- Urgent necessity;
- After conducting procurement under urgent necessity;
- Exclusive rights;
- Preventing the deterioration of quality of an object procured from the supplier;
- Holding an event of state and public importance without hindrance within limited timeframe.

The above Procedure shall ensure minimization of making a subjective decision by a purchaser. Accordingly, this chapter will look at the cases of simplified procurements, which, according to the law, require the Agency's consent.

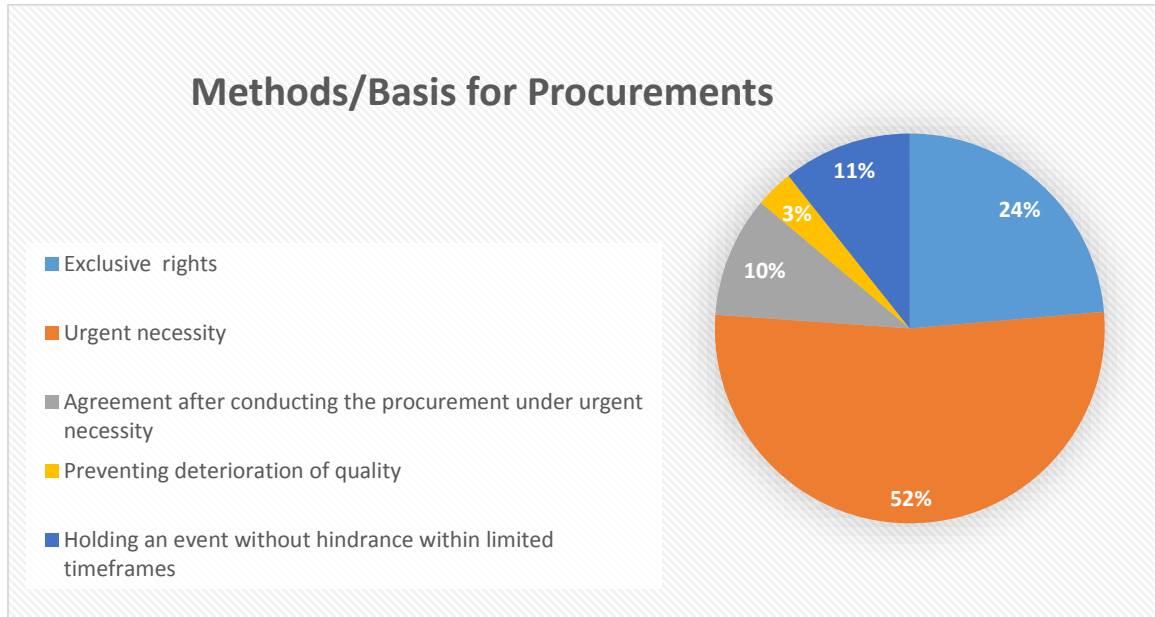
### GENERAL DATA

For the monitoring period, the SMP module on the website of the State Procurement Agency registered **4356 applications** in total. Out of these, the Agency consented to **3156 procurements**, rejected **315 procurements**, **214 applications were not reviewed**, and **671 applications were withdrawn** by procuring entities.



<sup>10</sup>[http://www.procurement.gov.ge/getattachment/ELibrary/LegalActs/gamartivebuli\\_Sesyidvis\\_Catarebis\\_wesi.pdf.aspx](http://www.procurement.gov.ge/getattachment/ELibrary/LegalActs/gamartivebuli_Sesyidvis_Catarebis_wesi.pdf.aspx)

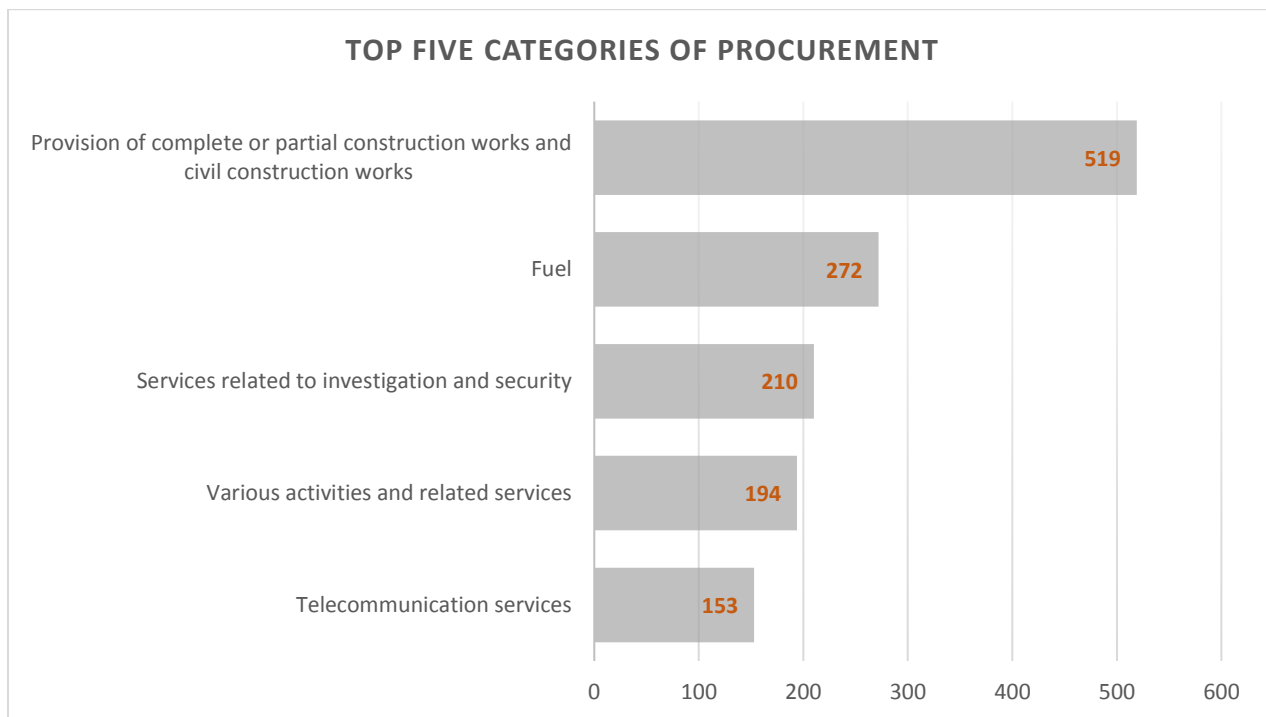
According to the applications submitted by procuring organizations, procurements conducted under urgent necessity prevail. On the above basis procuring entities have made 2286 applications, under exclusive rights - 1030 applications, on agreement after conducting the procurement under urgent necessity - 437, on the basis of preventing quality deterioration - 137 and for holding an event without hindrance within limited timeframe - 466 applications.



Pursuant to the Order of the Chairman of the State Procurement Agency, 272 procurement objects (Classification Unit) have been approved.<sup>11</sup> According to the above Order, there are also subcategories<sup>12</sup> that are included in the above-mentioned major division. Procuring organizations submitted applications within 197 procurement categories (72%). In some cases, procuring organizations indicated several procurement categories in one application, accordingly, the total number of the categories exceeds the number of applications submitted - 5162 cases. Out of this, 519 applications are related to the procurement for provision of complete or partial construction works and civil construction works (CPV 45200000).

<sup>11</sup> <https://matsne.gov.ge/ka/document/view/1014353>

<sup>12</sup> <http://www.procurement.gov.ge/getattachment/ELibrary/UsefulResources/CPV-codes-implemented-in-eProcurement.pdf.aspx>



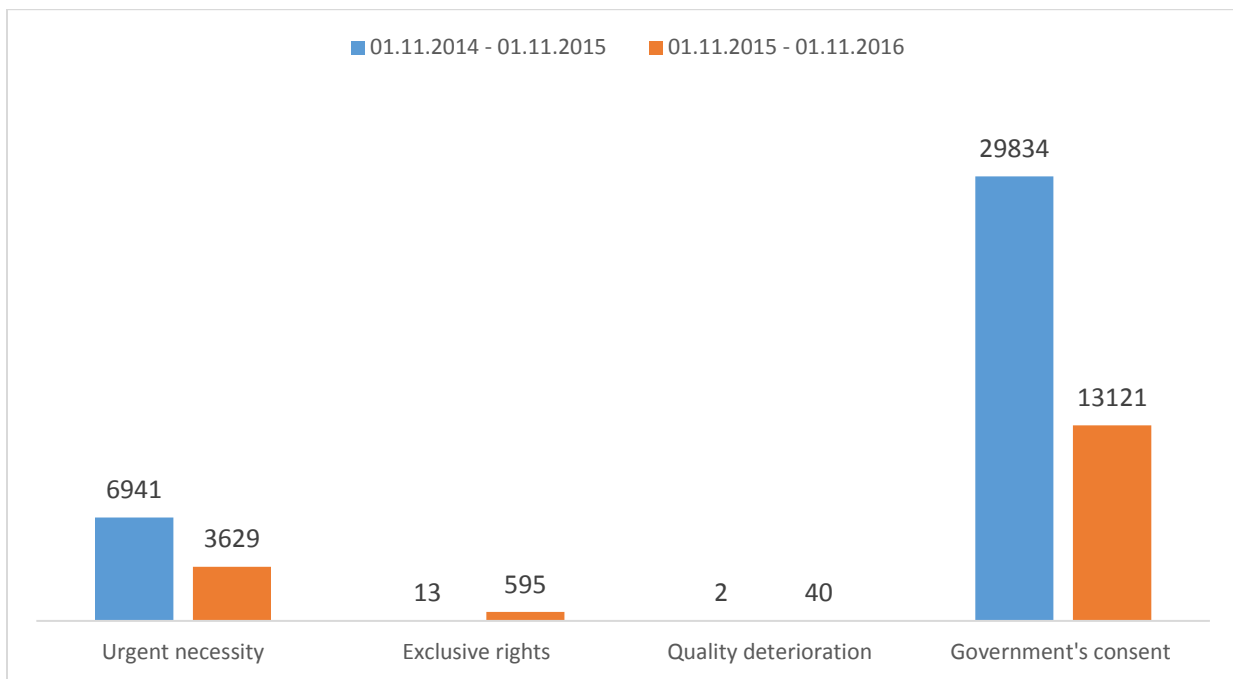
One of the objectives of the research was to compare the number of procurements with the same period of the previous year. It is noteworthy that, until March 2016, the search system of the CMR Module provided an incomplete list of the methods/basis of procurement and contained only a few of simplified procurement types, which prevented the monitoring team to compare the number of the purchases with the previous year. At the same time, when selecting a date, the system did not and does not show whether contracts are chosen by the date of contract award or the date of its registration in the procurement system, and the search system does not provide for the option where a user can choose the date of registration or the date of award of a contract, which creates another obstacle in comparison. In addition, after indicating a date, the system offers the contracts which were awarded prior to the designated period, and for the specified period, their validity term has been extended. In March 2016, the State Procurement Agency added the methods/basis of simplified procurement to the list in the search field, but it is likely that information under a specific method is not fully provided, namely, only 2 contracts were registered in the period of 2014-2015<sup>13</sup> on the basis of preventing the quality deterioration, while on the same basis 40 contracts were registered in 2015-2016.<sup>14</sup> The similar situation is in case of procurements with exclusive rights, in 2014-2015 period only 13 cases were registered, but 595 contracts were awarded in 2015-2016.

The chart below shows the comparison performed by using the CMR module of the Electronic Procurement System of the State Procurement Agency:

<sup>13</sup> From 1 November 2014 - 1 November 2015;

<sup>14</sup> From 1 November 2015 - 1 November 2016;





For more accurate and complete comparison, GYLA also applied to the State Procurement Agency and requested public information.<sup>15</sup> The Agency did not issue the information and noted that the information about contracts was available on the website.<sup>16</sup>

*During the monitoring period according to common data (01.11.15- 01.11.16) the total value of applications submitted by procuring organizations which the Agency consented to exceeds billions of GEL.<sup>17</sup>* However, the above does not include the applications on the basis of urgent necessity, since procuring organizations in procurements under urgent necessity are not obligated and in most cases, do not specify the estimated value of the procurement.

Despite the fact that the data of the CMR module of 2016 in quantitative terms are significantly lower than the data of 2015, it should be noted that the value of simplified procurements the Agency consented to in 2016 is much higher than it is indicated in the Agency's annual report 2015. In particular, the total value of contracts in 2015 amounted to 1,079,094,935 GEL, and the total value of consents issued in 2016 was 424'330'901 GEL, 277'656'877 USD and 18'699'769 Euros - in total 1,130,598,815 GEL.<sup>18</sup>

## METHODS/BASIS FOR SIMPLIFIED PROCUREMENT

This chapter deals with the methods/basis of simplified procurements in the existence of which a procuring organization in order to conduct a simplified procurement shall obtain a consent from the State Procurement Agency.

<sup>15</sup> GYLA' s application # 8 -04 / 452-16 of 25 November 2016;

<sup>16</sup> The correspondence # 5641 of the State Procurement Agency, December 13, 2016.

<sup>17</sup> 424'330'901 GEL; 277'656'877 USD; 18'699'769 Euros;

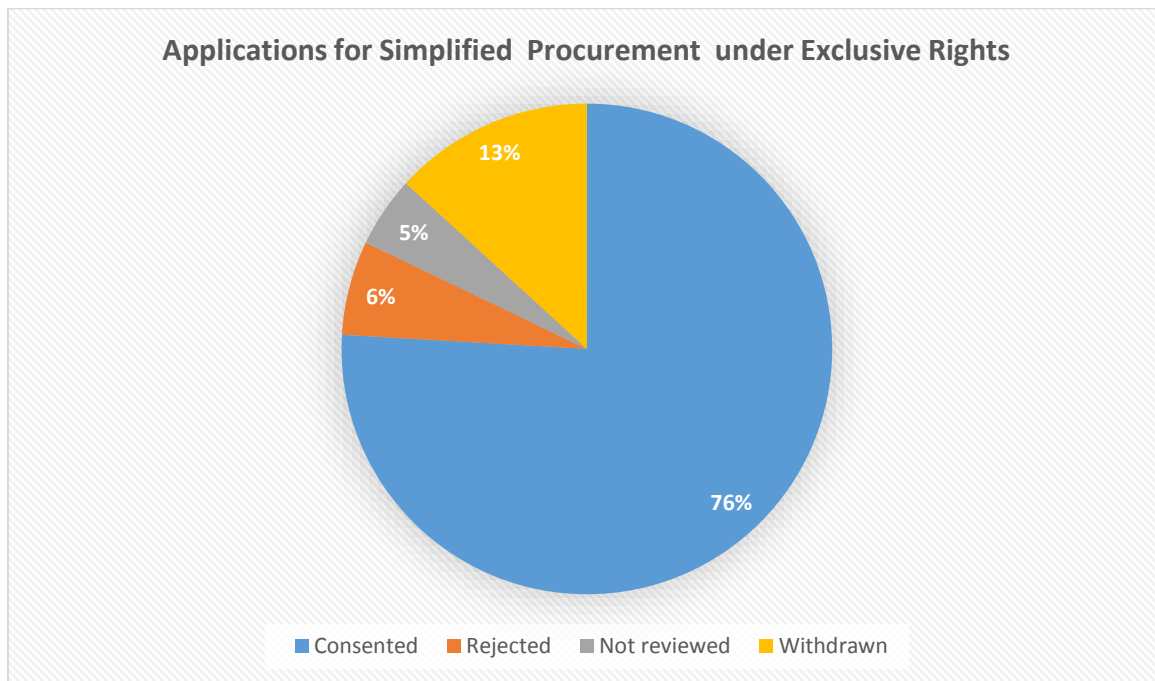
<sup>18</sup> The amount in GEL is converted based on the official annual average indicator of the National Bank of Georgia <https://www.nbg.gov.ge/index.php?m=304> ;

## a) Exclusive Rights

According to the Law of Georgia On State Procurement and the Procedure for Determining Simplified Procurement Criteria and Rules for Conducting Simplified Procurement, a state procurement may be effected through simplified procurement provided that supply of goods, provision of services or performance of construction works is an exclusive right of just a single entity.<sup>19</sup> Under the law, there shall be no reasonable alternatives to substitute the procurement object. In addition, there are cases established by the Law when a purchase may not be deemed as an exclusive right.<sup>20</sup>

A procuring organization, for implementation of procurement in the above method, shall fill a questionnaire to confirm the compliance with the above criteria in the SMP module on the Agency website, which has been approved as the Annex to the Procedure for Determining Simplified Procurement Criteria and Rules for Conducting Simplified Procurement.<sup>21</sup>

In the SMP module, 1030 such applications were registered during the monitoring period (01.11.15 - 01.11.16). Of these, the Agency consented to 782 cases and rejected 64 cases.



<sup>19</sup> Procedure for Determining Simplified Procurement Criteria and Rules for Conducting Simplified Procurement; Article 3(1)(a);

<sup>20</sup> The Law of Georgia "On State Procurement", Article 10<sup>1</sup>(3)(a);

a.a) an estimated value of the goods or services to be procured is over GEL 2 000 000, and an estimated value of works is over GEL 4 000 000, and within reasonable territorial boundaries outside the country there is another person who is able to supply the same goods, perform the same works, or render the same services;

a.b) an estimated value of the goods or services to be procured does not exceed GEL 2 000 000 and an estimated value of works does not exceed GEL 4 000 000 and within the country there is another person who is able to supply the same goods, perform the same works and render the same services;

<sup>21</sup> The questionnaires are given as an annex to the research. Please see Annex # 1;

The total value of the applications that the Agency has consented to (782 procurements) exceeds more than 90,000,000 GEL in total.<sup>22</sup>

The Agency has issued the consent in 190 cases for procuring under exclusive rights of investigation and security related services. All applications request rendering the security services where the supplier is the LEPL Security Police Department, which is natural because, according to the Law, only the LEPL Security Police Department has the authority to use weapon to protect an object. The total value of the above procurements accounted for 36,804,935.34 GEL.

## b) Urgent Necessity

According to the Procedure, another method/basis of simplified procurement is urgent necessity. It should be noted that urgent necessity may be a situation which poses a real threat to the operations of a procuring organization and the occurrence of which cannot be pre-defined, and / or which is not caused by the conduct of a procuring organization, and / or which may cause serious damage to public interest and/or civil interests of Georgia or a procuring organization's property. In case of urgent necessity, the quantity of goods, volume of works and services to be procured and the term for their implementation shall not go beyond the timeframe necessary for resolving the problems resulting from urgent necessity. At the same time, a procuring organization shall, to the maximum extent possible, avoid such actions that may artificially cause the necessity of urgent procurement.

If procurement under urgent necessity has been caused by assigning the tender / competition status "Ended in negative result", "Not held" or "Terminated", it is possible to award a contract through simplified procurement only to the supplier that meets the tender / competition requirements in accordance with the following principles:

- a) The value of a procurement object unit shall not exceed the unit price as defined in the tender / competition documentation;
- b) The experience and other personal characteristics of a supplier (annual turnover, number of employees, etc) shall not be worse than the data defined in the tender / competition documentation;
- c) Qualitative, qualitative or other data of a procurement object shall not be worse than the analogous data provided in the tender / competition documentation.

Otherwise, the purchaser shall be obliged to provide and attach to the contract the reasoning for the objective circumstances that led to non-compliance of the abovementioned requirements.

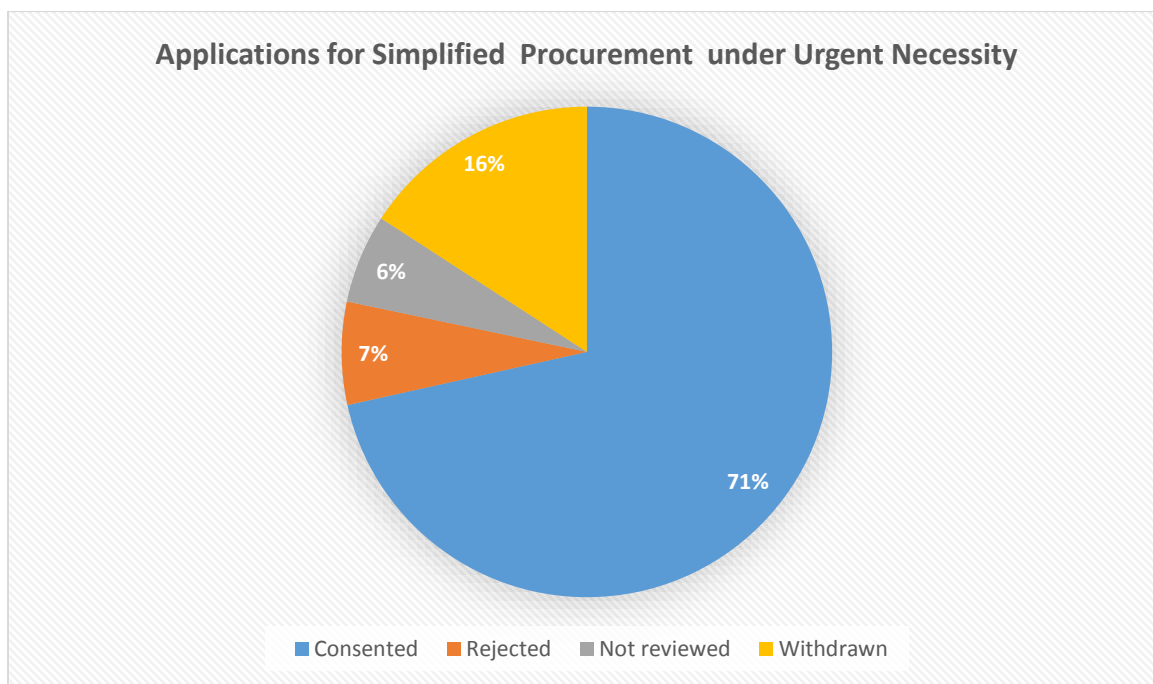
A procuring organization for the purpose of conducting the procurement in the above manner, shall fill a questionnaire to confirm the compliance with the above criteria in the SMP module on the Agency website.<sup>23</sup>

The SMP module contained 2286 such applications in the monitoring period. In 1635 cases the Agency consented to, and 155 rejected.

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<sup>22</sup> 77,603,534.54 GEL; 3,954,431.17 USD; 2,442,618.76 EUR.

<sup>23</sup> The questionnaires are given as an annex to the research. Please see Annex # 2;



*The monitoring team was not able to calculate the total value of goods / services to be purchased, as procuring organizations are not obligated, and in most cases, do not specify the estimated value of a specific procurement, which causes reduction of transparency and without this indicator compromises the objectivity of the Agency's assessment, thus it is unclear whether they have accurate information during decision-making process.* According to the Procedure, if the urgent necessity has been caused by a negative result of the tender, the value of a procurement object unit shall not exceed the unit value as defined by the tender / competition documentation or otherwise change the tender / competition terms. *In the assessment questionnaire, to the question "May the tender / competition terms deteriorate by awarding a contract" the possible answers are "yes" or "no", which cannot become the basis for objective evaluation unless the Agency knows what conditions actually a procuring organization had when participating in the tender.*

Despite the fact that the Agency has the obligation to justify *"why cannot the tender / competition conditions be complied with,"* there is a risk that a procuring organization may avoid this question by skipping the previous one. *Since a procuring organization is not obligated to indicate the number of an unsuccessful tender application, the Agency cannot verify the correctness of the organization's response.*

Besides, there is also a risk that a purchaser may pay an unrealistically high price in the procurement. The Agency obligates a procuring entity to indicate *the quantity of goods, volume of services or construction works to be purchased which is required to resolve the existing situation,* however, as it was mentioned above, does not oblige it to specify the estimated price, which can lead to the situation when a purchaser may pay a higher price for the same quantity or volume of goods / services.

Therefore, procuring organizations, when submitting an application, shall be obligated to indicate the estimated price of the procurement and also, if any, the number of unsuccessful tender application.

According to the categories, for the procurement of one of the most demanded goods-fuel, in almost every case, procurement organizations indicate the urgent necessity as the method of procurement.<sup>24</sup> The Agency has issued consents for 150 organizations for such procurement. In 2 procurements the Agency has issued the consent when the purchaser already conducted the procurement on the basis of urgent necessity.

In this case, one of the highly demanded goods is fuel for the purchase of which the State conducts a consolidated tender. According to the Decree issued by the Chairman of the Agency, the Procedure and Terms for Conducting Consolidated Tenders of Petroleum Products (Fuel)<sup>25</sup> has been approved under which procuring organizations are obliged to conclude a contract with a winning company. However, on the basis of Article 5, paragraph 4 of the same rule, a buyer may purchase fuel under urgent necessity unless a gas station of a winning company is available within 15 km distance. For this reason, 120 procuring organizations have received the consent from the Agency, which can once again lead to more irrational spending. Since the lowest price principle in this case is no longer applicable, a purchaser procures the goods at the price offered in place. ***Consequently, this cannot solve the problem of possible irrational spending, especially when a procuring organization does not have an obligation to specify the price of the purchase when submitting an application to the Agency for conducting procurement under urgent necessity.*** In most cases, this problem is encountered at the regional level, and accordingly, if the tender commission increases the number of petrol stations in the consolidated tender terms and conditions and provides a minimum number of petrol stations in Tbilisi and the regions, this will likely contribute to better fuel delivery to organizations and reduce the risks related to irrational spending.

Most procurement conducted on the basis of urgent necessity were identified in the category that is the largest among procurements, namely, provision of complete or partial construction works and civil construction works. Within this category, procuring organizations applied to the Agency 332 times and in 266 cases received the consent.

### (c) Agreeing after conducting procurements under urgent necessity

Although a procuring organization shall agree with the Agency the decision on awarding a contract through the simplified procurement prior to conducting simplified procurement according to any method stipulated in the Procedure, there is an exemption that allows an entity to start the procurement procedures prior to application to the Agency. Pursuant to Article 5 (6) of the Procedure, if the decision on a procurement under urgent necessity is not possible to be agreed with the Agency, as the delay of the procurement with a high degree of probability may cause an irreparable damage to benefit(s)<sup>26</sup> referred to in Article 4(3) of the Procedure, the procuring organization shall be entitled to initiate the procurement procedures upon which it shall make a reasonable decision and promptly submit it to the Agency. The Agency shall examine the lawfulness of such decision of the procuring entity, and in case of its approval the Agency shall recognize the decision of the procuring entity as lawful, and in case of rejection, the Agency shall require from the procuring organization to

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<sup>24</sup> 257 applications out of 272 are submitted on the basis of urgent necessity;

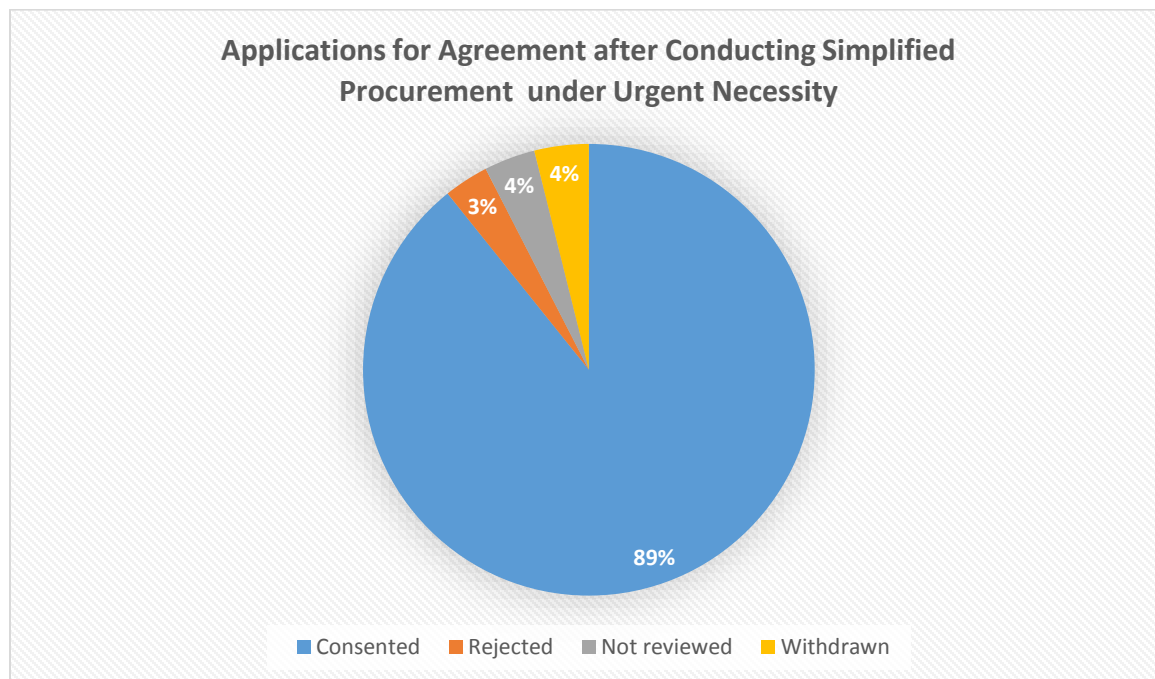
<sup>25</sup> <http://www.procurement.gov.ge/getattachment/ELibrary/LegalActs/matsne-2599971-0.pdf.aspx>

<sup>26</sup> Causing real threat to the operations of the procuring organization and which cannot be predefined and / or the occurrence of which is not caused by the conduct of the procuring entity or which may cause significant damage to the state and / or public interests of Georgia or the property of the procuring entity.

immediately terminate the procurement procedure and conduct it in accordance with the legislation. In addition, the procuring entity shall be liable under the provision established by the law.

A procuring organization for the purpose of conducting the procurement in the above manner shall fill a questionnaire to confirm the compliance with the established criteria in the SMP module of the Agency.<sup>27</sup>

437 applications have been submitted to the SMP module under the above grounds, 390 applications were approved and 14 applications rejected.



The total value of the applications submitted that the Agency consented to (390 procurements) totaled 9,574,438 GEL and 2,127 USD.

As noted above, the Agency has not recognized 14 procurements as lawful and ordered the procuring organizations to immediately suspend the procurement procedures. The applications were submitted by the Kindergarten Association of Khelvachauri, Self-Governing Community - Gori Municipality Department of Improvements and Ozurgeti Municipality. In all procurements the organizations have awarded the suppliers contracts which are signed and valid.

As mentioned above, if the procurement is rejected, the Agency shall require a procuring entity to suspend the procurement procedure immediately and carry it pursuant to the legislation. In addition, the procuring entity shall be liable under the provisions established by the law.

Based on the above mentioned, GYLA applied to the Agency with the request to issue the information whether the officials of N(N)LP Kindergarten Association of Khelvachauri, N(N)LP Self-Governing Community - Gori Municipality Department of Improvements (Gori Municipality) and the Ozurgeti Municipality have been imposed the liability (if yes, requested the copies of the protocols on

<sup>27</sup> The questionnaires are given as an annex to the research. Please see attachment # 3;

administrative offences).<sup>28</sup> According to the correspondence provided by the Agency,<sup>29</sup> the protocols on administrative offences were drawn up against the Heads of the procuring organizations. The Court found that in the cases of N(N)LP Kindergarten Association of Khelvachauri and N(N)LP Gori Municipality Department of Improvements, unlawful activities were performed and the Court applied only a warning as a sanction, and the protocol drawn up against Ozurgeti Municipality has been sent to the court for consideration.

GYLA in February 2016 applied about the above issue to the Agency,<sup>30</sup> which provided the letter dated January 15, 2016 as an annex, in which the Agency requested the explanation on what actions were carried out by N(N)LP Self-Governing Gori Community - Municipal Department of Improvements to execute the Order of the Agency. The Agency allowed the Department 5 days to submit the explanation. According to the letter of 15 February 2016 sent by the Department of Improvements, the Director of the Department explained that despite the fact that the Agency recognized the procurement as unlawful, the contract had already been in progress, so they were unable to suspend the procurement procedures. In addition, the payment was made in December, 2015.

As the above correspondences show, neither the Agency nor the procuring organization can respond effectively to the cases where the procurement is conducted under urgent necessity prior to agreeing it with the Agency, and later the Agency recognizes such procurement as unlawful.

*The essence of "Starting the Procurement Procedures" shall be defined in detail in the "Procedure for Determining Simplified Procurement Criteria and Rules for Conducting Simplified Procurement",* whether or not the procedure includes awarding a contract, or it is only market research or other action. Consequently, the Procedure should define and determine the terms of starting procurement procedures, after the implementation of which a procuring entity, if the Agency rejects the procurement, will be able to suspend the procurement procedures.

#### **d) Avoiding quality deterioration**

According to the Procedure for Determining Simplified Procurement Criteria and Rule for Conducting Simplified Procurement, the Agency's consent shall be also obtained if it is necessary to undertake procurement from the same supplier or a subcontractor envisaged under a contract concluded with the same supplier in order to avoid the worsening of quality of an object purchased and / or to ensure its further operation. In such case, the estimated value of an object of procurement concerned shall not exceed the value of an object procured originally.

A procuring organization for the purpose of conducting procurement in the above manner shall fill in a questionnaire to confirm the compliance with the above criteria in the SMP module of the Agency.<sup>31</sup>

On the above basis, 137 applications have been submitted to the SMP module, for 72 of them the entities received consent, and 20 applications were rejected.

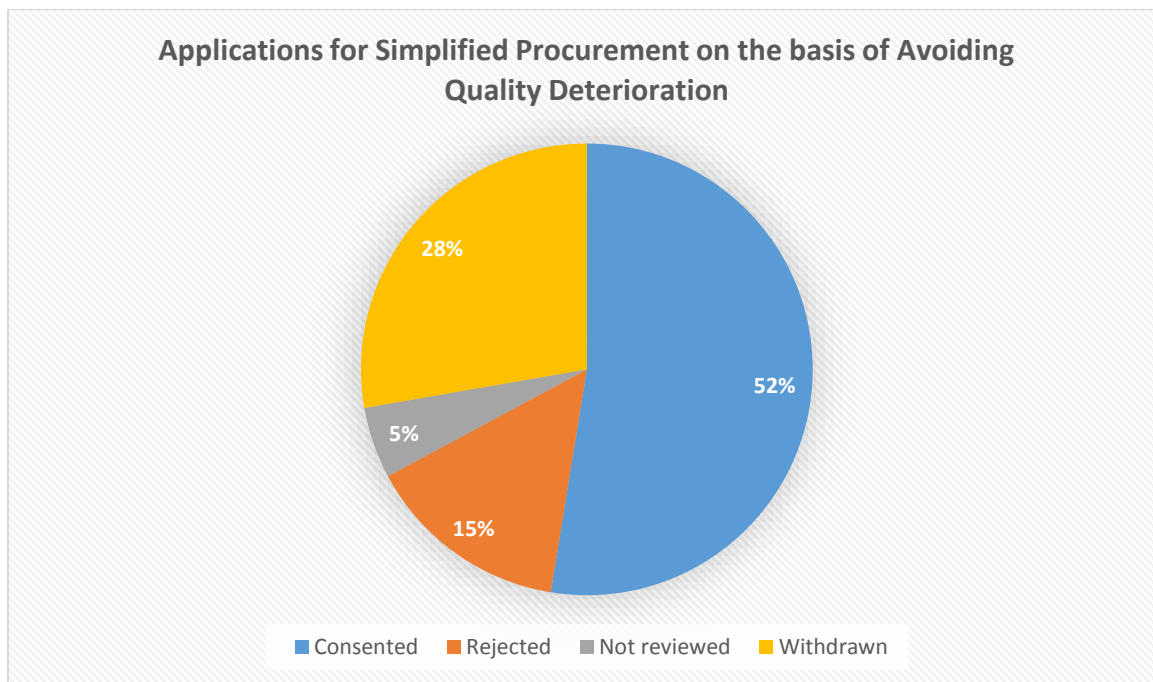
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<sup>28</sup>The GYLA's application # 8-04 / 453-16 of 25 November 2016;

<sup>29</sup> Correspondence # 5571 of the State Procurement Agency, 9 December 2016;

<sup>30</sup> The GYLA's application #8-04/48-16 of 12 February 2016;

<sup>31</sup> The questionnaires are given as an annex to the research. See Annex # 4;



The total value of the applications that the Agency has consented to (72 procurements) has totaled 7,989,443 GEL, 1,508,544 USD and 3,556,897 EUR.

**e) Holding an event of state and public importance without hindrance within limited timeframe**

According to the Procedure, the Agency's consent shall be also obtained for simplified procurements for holding an event of state and public importance without hindrance within limited timeframes. An event to be procured shall serve a major political, defense, economic, social, cultural, educational or other public purpose of the country. In addition, it is necessary that due to the limited time, purchase of objects of procurement related to holding such events through a simplified electronic tender, electronic tender or competition procedures will cause serious hindrance, interruption/disruption in holding such event. A procuring organization, to the maximum extent possible, shall avoid the conduct which may artificially cause hindrance, interruption/disruption of the event and / or interfere with its uninterrupted provision.

For conducting procurement for the purpose of holding an event of state and public importance without hindrance within limited timeframe, the application of a procuring entity, once consented by the Agency, shall be approved by:

- a) the Government of Georgia;
- b) the Government of the autonomous republics – in public procurement with funds from public budget of the autonomous republics and / or from the budgets of self-government units within the administrative boundaries of the autonomous republics and also in the case of public procurement using other organizations and institutions that are financed from the budgets of autonomous republics and relevant self-government units;
- c) The Board of the National Bank of Georgia - in case of procurement by the National Bank of Georgia.

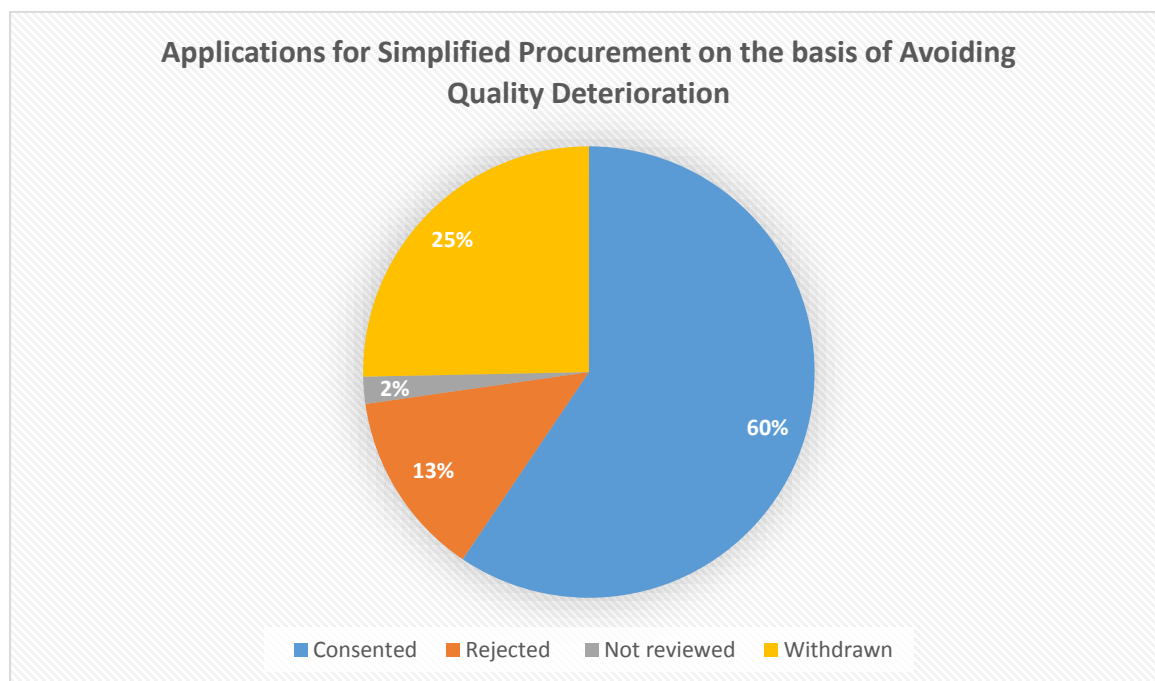


According to the law applicable today, as well as until November 2015, procuring organizations conducted simplified procurements based on orders issued by executive authorities for the purpose of holding events of state and public importance without hindrance within limited timeframes, although neither the law nor the procedures applicable at that time specified the essence and content of such events. Nevertheless, millions of GEL contracts were awarded with selected companies on the basis of the Government Decrees.

Today as well as previously, the maximum value of such procurements were not determined, which, if taken into consideration that in the field of procurement it was not defined what an event of state and public importance could have meant, it remained the uncontrolled and free area for organizations.

In order to carry out the procurement of events of state and public importance without hindrance within limited timeframes, a procuring entity shall fill in a questionnaire to confirm the compliance with the criteria in the SMP module of the Agency.<sup>32</sup>

In the monitoring period, 466 applications based on the above ground were submitted to the SMP Module, in 277 cases the organizations received consent and 62 applications were rejected.



The total value of the applications consented to by the Agency (277 procurements) has totaled 329,163,486 GEL, 272,191,775 USD and 12,700,254 Euros.

Despite a little number of procurements, in terms of value, the procurements conducted on the above ground prevail, which once again demonstrates the need to specify the maximum value for procurements to be conducted for holding events of state and public importance without hindrance

<sup>32</sup> The questionnaires are given as an annex to the research. See Annex # 5;

within limited timeframes and the need to provide a regulation related thereof in order to prevent corruption risks.

## Conclusion and Recommendations

Based on the analysis of the issues discussed in the presented document, the following conclusions and recommendations have been made:

- The State Procurement Agency has submitted no initiative to the Government of Georgia nor a draft law to the Parliament of Georgia, which would reduce the methods of simplified procurement. The Agency and the Government of Georgia should work together in order to reduce specific exemptions in the law and submit a draft law to the Parliament to reduce the number of simplified procurements and also the share value of purchases in the total number of procurements.
- During the reporting period, the total amount of the consents issued for the applications submitted by procurement organizations exceeded a **billion GEL** in total. The above amount includes simplified procurements conducted under the following four grounds only, namely:
  - After conducting procurement under urgent necessity;
  - Exclusive rights;
  - Avoiding the deterioration of quality of an object procured from the supplier;
  - Holding an event of state and public importance without hindrance within the limited timeframe.
- The above mentioned one billion GEL does not include goods / services purchased under urgent necessity and the value of a number of other simplified procurements conducted on other basis. However, in the same period of the previous year<sup>33</sup> the value of the total number of simplified procurements<sup>34</sup> is almost the same as the above simplified procurements carried out on the basis of four methods only.<sup>35</sup> ***Consequently, despite the decrease in the number of procurements, the value of procurements has not reduced, but increased.***
- The State Procurement Agency must review the data of simplified procurements in its reports in more details. The provision of detailed analysis of information in annual reports of the Agency will enable the public to receive information on how many and what method procurements were carried out during the year, what amounts of money such procurements were related to and what the procurement statistics is compared to the same period of the previous year.
- Under the conditions, when procuring organizations are not obligated and in majority of cases do not specify the estimated value of procurement under urgent necessity, the transparency and objective assessment of the Agency without this indicator is compromised; In case of procurement under urgent necessity, there is a risk that a procuring entity may pay unrealistically high price for the purchase. The Agency obliges a procuring organization to indicate the quantity of goods, the volume of services or construction works to be procured, which is required to resolve the situation, but does not oblige to specify an estimated reference price, which may result in a procuring organization purchasing the same quantity or volume of goods / services at a much higher price.

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<sup>33</sup> The period of the report on the State Procurement Agency's activities includes the year of 2015:

[http://procurement.gov.ge/getattachment/ELibrary/AnalyticalStudiesReports/Angarishi\\_2015\\_geo.pdf.aspx](http://procurement.gov.ge/getattachment/ELibrary/AnalyticalStudiesReports/Angarishi_2015_geo.pdf.aspx)

<sup>34</sup> 1,079,094,935 GEL;

<sup>35</sup> 424'330'901 GEL; 277'656'877 USD; 18'699'769 Euros;

- Suspension of the procurement procedures is practically impossible by a procuring entity, when in agreeing the procurement conducted under urgent necessity, the Agency deems the procurement unlawful. Since such contracts are already awarded and provision of services is already in progress, or purchased goods are delivered, procuring organizations are not able to terminate contracts. Consequently, the terms of starting the procurement procedures should be added and determined in the Procedure, after implementation of which a procuring entity, in case the Agency rejects the procurement, will be able to suspend the procurement procedures.
- So far, the price range for conducting procurements for holding events of state and public importance without hindrance within limited timeframe has not been determined, which gives procuring organizations a kind of freedom to award high value contracts under a simplified procedure without any additional regulations, as it happens in other simplified methods of procurements. In order to avoid corruption risks, it is necessary to set the limit on simplified procurements conducted under the Government's consent, and provided that procurement value exceeds the specific limit, additional regulations should be imposed in order to prevent possible corruptive transactions and to ensure a high standard of transparency.

## Annex

### # 1 Exclusive Rights

- Please indicate a person/entity whose exclusive right is the supply of goods, provision of services or performance of construction works to be procured.
  - Please select the CPV code.
  - Please indicate the delivery period of the procurement object.
  - Please specify the value of the procurement.
  - What is the object of procurement?
  - Why is it necessary to procure the object?
  - What methods have been used to establish the person's exclusive rights?
  - What methods have been used to determine that there are no reasonable alternatives to substitute the procurement object?
  - What methods have been used to calculate the value of the procurement?
  - Is the estimated value of goods or services to be procured more than 2 000, 000 GEL and construction works - 4 000, 000 GEL? (Yes /No)
    - [If yes] outside the country, within reasonable territorial boundaries, is there another person who is able to supply the same goods, perform the same works, or render the same services?
    - [If yes] what methods have been used to determine reasonable territorial boundaries outside the country?
    - [If yes] What methods have been used to establish that there is no other person outside the country within reasonable territorial boundaries who is able to supply the same goods, perform the same works, or render the same services?
    - [If no] Is there a person who is able to supply the same goods, perform the same works, or render the same services?
    - [If no] What methods have been used to establish that there is no other person within the country who is able to supply the same goods, perform the same works, or render the same services?
  - Is it possible to divide the object of procurement into separate components and procure that way? (Yes /No)
    - [if not possible to divide] Why is it impossible to divide the object of procurement into components?
    - [If not possible to divide] Why is it impossible to procure divided components?
    - [If possible to divide] Why is it impossible to purchase divided components from other persons?
  - How are the terms and conditions of contract execution determined?
  - How reasonable are the terms of contract execution and validity, in the sense that there might emerge a supplier of goods, service provider or other person performing construction works and / or an appropriate alternative to substitute the object of procurement?
  - Please upload a reasoned decision on the simplified procurement.

### # 2 Urgent Necessity:

- Please select the CPV code.
- Please indicate the delivery period of the procurement object.
- What is the object of procurement?
- Why is it necessary to procure the object?
- What has caused the emergence of urgent necessity?
- Why could not have been the urgent necessity predetermined?
  - What is the real threat to operations of the procuring organization?
- Does the urgent necessity cause significant damage to the state and / or public interests of Georgia or property of the procuring entity? Why?
  - Has the urgent necessity been caused due to assigning the tender / competition status "Ended in negative results", "Not held" or "Terminated"? (Yes/ No)
  - [If yes] Please select the status of the tender / competition.
  - [If yes] Has the award of the contract caused the deterioration of the tender / competition terms? (Yes /No)
  - [If terms are changed] Please specify why the tender / competition terms cannot be met?
  - Please indicate the period of time necessary for resolving the situation.
  - Please indicate the quantity of goods, volume of services or construction works to be procured in order to resolve the situation.
  - How can it be confirmed that the quantity of goods, volume of services or construction works to be procured does not exceed the volume of procurement required to resolve problems caused by urgent necessity?
  - What time is required to award a contract?
  - Please upload a reasoned decision on the simplified procurement.

### **# 3 Urgent Necessity (if it refers to Article 5 (6) of the Rules):**

- Please select the CPV code.
- Please indicate the delivery period of the procurement object.
- Please indicate the value of procurement.
- What is the object of procurement?
- Why is it necessary to procure the object?
- What has caused the emergence of urgent necessity?
- Why could not have been the urgent necessity predetermined?
  - What is the real threat to operations of the procuring entity?
- Does the urgent necessity cause significant damage to the state and / or public interests of Georgia or property of the procuring entity? Why?
  - Please indicate with the high degree of probability what irreparable damage can the delay in procurement cause to the above mentioned benefits?
  - Please indicate the quantity of goods, volume of services or construction works procured to resolve the situation.
  - How can it be confirmed that the quantity of goods, volume of services or construction works procured does not exceed the volume of procurement required for resolving the problems caused by urgent necessity?
  - Please upload the awarded contract, unless it is uploaded in the CMR module of the system yet.

- Please upload a reasoned decision on the simplified procurement.

**# 4 Avoiding the deterioration of quality of a procurement object procured from the supplier and / or ensuring its further operation:**

- Please select the CPV code.
- Please specify the value of the procurement.
- Please describe the object procured from the supplier.
- Is the original state procurement contract uploaded in the system? (Yes / No)
- [If yes] Please, indicate the registration number of the tender / competition application or the contract in the CMR module.
- [If the contract is awarded before the system or the system CMR module is created] Please upload the contract.
- What is the object of procurement?
- Why is it necessary to procure the object?
- What methods have been used to determine the value of procurement?
- Why may the quality of the procured object deteriorate and / or further operations damaged unless the contract is concluded with the initial supplier or its subcontractor? Why is it impossible to award the contract to another supplier?
- Please upload a reasoned decision on the simplified procurement.

**# 5 Holding an event of state and public importance without hindrance within limited timeframe:**

- Please select CPV code (s)
- Please specify the estimated value of procurement.
- Briefly describe the event to be held.
- Why is the event of state and public importance?
- What caused the necessity of holding the event in a limited timeframe and why was it impossible to plan the procurement in advance?
- What period of time is allocated for holding the event?
- Please indicate the list, quantity (volume) of object (s) of procurement required for holding the event.
- Why can the procurement of the procurement objects for holding the event through the simplified electronic tender, electronic tender or competition procedures result in substantial hindrance, interference and / or disruption in holding the event?
- Please upload the drafts of the legal acts issued by the Government of Georgia, the Governments of Autonomous Republics or the Board of the National Bank of Georgia.
- Please upload a reasoned decision on the simplified procurement.