

**Order №1
Of the Chairperson of State**

Procurement Agency

February 8, 2018

Tbilisi

On Approval of the Procedure for Activity of Public Procurement-related Dispute Resolution Council

Under Article 2 of the Law №1945 of Georgia on Making Amendments to the Law of Georgia on Public Procurement dated December 23, 2017, Articles 5(1)(a), 7(2)(d), 23 and 23¹ of the Law of Georgia on Public Procurement, also Article 25(1)(b) of the Law of Georgia on Normative Acts, **I hereby order:**

1. Following shall be approved:

- a) Procedure for Activity of the Public Procurement-related Dispute Resolution Council;
- b) Electronic form of an appeal and instruction for filling it up (annex).

2. Order №1 of the chairperson of State Procurement Agency on Approval of Procedure for Activity of the Public Procurement-related Dispute Resolution Council dated February 27, 2015 shall be declared invalid.

3. The order shall not apply to the review of the appeals lodged with the Council prior to its entry into force. The appeals thereof shall be reviewed under Order №1 of the chairperson of State Procurement Agency on Approval of Procedure for Activity of the Public Procurement-related Dispute Resolution Council dated February 27, 2015.

4. The order shall enter into force from February 9, 2018.

**Chairperson of State Procurement
Agency**

Levan Razmadze

Procedure for Activity of Public Procurement-related Dispute Resolution Council

Chapter I. General Provisions

Article 1. Scope

1. “Procedure for Activity of Public Procurement-related Dispute Resolution Council” (hereinafter – the Procedure) has been drafted on the bases of the Law of Georgia “on Public Procurement” (hereinafter – the Law) and it defines legal grounds for setting up and operation of the Public Procurement-related Dispute Resolution Council (hereinafter – the Council), as well as procedure for filing an appeal in the Council, reviewing an appeal and its resolution.
2. The Procedure shall apply to the disputes arising during electronic tenders and contest.

Article 2. Principles of the Activity of the Council

1. The Council is an impartial and independent body established on the basis of the Law, tasked with fast, efficient and fair resolution of disputes arising during electronic tenders and contests.
2. The Council shall act in accordance with the Constitution of Georgia, international treaties and agreements, Law of Georgia “on Public Procurement”, this Procedure and other legislative and normative acts.
3. The Council shall be independent in its activity and shall be separate from all bodies and/or public entities.

Article 3. Terms

Terms used in the Procedure shall have the same meaning as in the Law and also in other subordinate normative acts regulating public procurements that have been issued under the Law considering the peculiarities of the Procedure.

Article 4. Electronic Module

1. In order for the Council to carry out its activities effectively and openly, a special electronic module designated for the Council – <https://tenders.procurement.gov.ge/dispute> (hereinafter – the electronic module) shall operate within the system (hereinafter – the system).
2. Appeals made to the Council, enclosed documents, decisions of the Council in relation to appeals, other materials related to the review of an appeal, as well as other information defined by the Procedure and its annex shall be published on the electronic module.
3. The Council/the Office of the Council shall submit any notification/information in relation to the review of an appeal via electronic module, which shall be deemed delivered to the respective person.

4. The Council/ the Office of the Council shall be authorized to use other means of communication (email, phone, SMS) to submit the notification/information defined in the paragraph 3 of this article, which shall be deemed official.

5. The information on the electronic module shall be public except for the personal data, which is protected in accordance with the law of Georgia and not a subject for publication.

Chapter II. Composition and Structure of the Council

Article 5. Composition of the Council

1. Based on a parity principle, the Council shall be comprised of three representatives of the State Procurement Agency (hereinafter – the Agency) and three representatives of the relevant field from non-governmental organizations, except for the cases provided for in paragraph 2 of this article.

2. Where estimated value of procurement equals or exceeds the monetary thresholds established by the EU Directives in the field of public procurement, along with the persons referred to in paragraph one of this article the Council shall also be comprised of the representatives of LEPL Competition Agency (hereinafter – Competition Agency), Georgian Chamber of Commerce and Industry and Office of the Business Ombudsman of Georgia - one representative from each body, also one representative from respective field of academia.

3. For the purposes of paragraph 2 of this article, following are the monetary thresholds established by the EU Directives in the field of public procurement:

- a) In case of goods and services – where estimated value of procurement equals or exceeds 144 000 EUR equivalent in GEL at the exchange rate established by the National Bank of Georgia at the time of announcing the procurement;
- b) In case of works - where estimated value of procurement equals or exceeds 5 548 000 EUR equivalent in GEL at the exchange rate established by the National Bank of Georgia at the time of announcing the procurement.

Article 6. Defining the Representative of the Agency to the Council

1. The chairperson of the Agency shall be one of the representatives of the Agency to the Council.

2. The chairperson of the Agency shall define the other two representatives of the Agency to the Council from the staff of the Agency for the term of 1 year.

3. The representative of the Agency shall be defined as the member of the Council not less than 10 days before expiration of term of the previously defined member.

Article 7. Selection of the Members of the Council from Non-Governmental Organizations

1. Three representatives from NGOs shall be selected as the members of the Council according to the

principle of rotation for the term of 1 year.

2. A representative of NGO shall be appointed to the vacant position of the member of the Council only through elections.

3. In order to select a member of the Council from NGOs, the Office of the Council shall ensure notifying NGOs regarding vacancy for the position of the member of the Council through the web-page of the Agency www.procurement.gov.ge. The Office of the Council shall be entitled to disseminate information through other means of communication as well.

4. Information regarding vacancy shall contain the following:

a) amount of vacancies for the position of the Council member;

b) description of the functions of the Council member;

c) qualification criteria established for the Council member;

d) time limit and procedure for submission of applications;

e) list of documents to be submitted by the applicant:

e.a) CV;

e.b) document certifying education;

e.c) certificate from the nominating NGO that shall contain the designation of the position held by the applicant, date of holding this position and term for labor relations;

e.d) Submission from the nominating NGO;

f) additional information (if any).

5. One NGO shall be eligible to nominate only one candidate. The candidate shall be the employee of the same NGO.

6. Time limit for submission of applications shall be not less than 10 working days.

7. The application shall contain the information about the candidate which is required in the vacancy. The Office of the Council shall provide verification of only formal compliance of the applications to established requirements and their shortlisting.

8. Elections of the members of the Council shall be set within not later than 5 working days after receipt of applications. The representatives of NGOs shall be notified about the date and venue of elections in accordance with the procedure established by paragraph 3 of this article. Elections shall be public.

9. Only the representatives of NGOs (including candidate(s) for the Council membership), registered in advance, shall be able to participate in the elections of the members of the Council with active suffrage.

Only one representative can vote from one NGO. Elections can be held if not less than 3 representatives of NGOs registered beforehand are present. In order to vote, the representative of NGO shall have document/certificate evidencing authority. In order to elect members of the Council, the representatives of NGOs shall gather on the date and in the venue defined in accordance with paragraph 8 of this article.

10. The Office of the Council shall ensure only organizational and technical support for the elections of the members of the Council. It shall be inadmissible for the representatives of the Agency and/or the Office of the Council to express their opinion regarding the elections of the Council members and/or make any influence on the voting process.

11. Before commencement of elections the member of the Office of the Council - Secretary of the Meeting shall verify the identity and authority of the representatives of NGOs; he/she shall also check whether or not the representatives of NGOs went through preliminary registration for voting. After this, the candidate(s) for the membership of the Council shall present themselves to the representatives of NGOs participating in the elections for the members of the Council and this is followed by secret ballot. One representative shall vote for only one candidate. The candidate obtaining the majority of votes shall be deemed as the winner. In case of a tie, repeated ballot shall be held among these candidates under the same procedure. The member of the Office of the Council - Secretary of the Meeting, shall announce the results of the ballot.

12. The results of the elections shall immediately be documented in the minutes of the representatives of NGOs. Minutes shall be signed by the representatives of attending NGOs and the member of the Office of the Council - Secretary of the Meeting.

13. Where the elections failed to be held or the member of the council could not be selected, the process of selection of the members of the Council shall start repeatedly not later than 5 working days in accordance with the procedure established by this article.

14. Repeated elections of the Council shall be held not later than 30 days before expiration of the term of the member of the Council. In case the elections failed to be held or the member of the Council could not be selected, respective Council member may, with his/her consent, be extended his/her authority under the decision taken with the majority of all the members of the Council defined in paragraph one of article 5 of this Procedure, however with not more than three months, prior to selection of a new member of the Council.

Article 8. Nomination of the Members of the Council by Authorized Bodies

1. The chairperson of the Competition Agency, the president of Georgian Chamber of Commerce and Industry and Business Ombudsman of Georgia shall nominate one representative each from the staff of the bodies thereof as the members of the Council from Competition Agency, Georgian Chamber of Commerce and Industry and Office of the Business Ombudsman of Georgia with the term of 1 year respectively.

2. The representatives meeting the qualification criteria established by article 12 of this Procedure for the members of the Council shall be nominated as the members of the Council.

3. The representative of the respective body shall be nominated as the member of the Council not later

than 10 days before expiration of the term of the previously nominated member from the body thereof.

4. The Office of the Council shall address the chairperson of the Competition Agency, the president of Georgian Chamber of Commerce and Industry and Business Ombudsman of Georgia in writing in respect of nominating the member of the Council from respective body.

Article 9. Selection of the Member of the Council from Academia

1. Academia shall select one representative as the member of the Council with the term of 1 year.

2. For the purposes of this Procedure, a representative of academia shall imply academic or scientific staff of higher educational institutions, independent scientific and research unit and/or LEPL Scientific and Research Institution.

3. The representative of academia shall hold the vacant position of the member of the Council only through elections.

4. In order to select a member of the Council from academia, the Office of the Council shall ensure notifying academia regarding vacancy for the position of the member of the Council through the web-page of the Agency www.procurement.gov.ge. The Office of the Council shall be entitled to disseminate information through other means of communication as well.

5. Information regarding vacancy shall contain the following

a) amount of vacancies for the position of the Council member;

b) description of the functions of the Council member;

c) qualification criteria established for the Council member;

d) time limit and procedure for submission of applications;

e) list of documents to be submitted by the applicant:

e.a) CV;

e.b) document certifying education;

e.c) certificate from higher educational institution, independent scientific and research unit or LEPL Scientific and Research Institution which shall contain information about designation of the occupied scientific/research position, date of occupying this position and term for labour relations;

f) additional information (if any).

6. Time limit for submission of application shall be not less than 10 working days.

7. Only the representative of academia shall be entitled to submit an application.

8. The application shall contain the information about the candidate which is required in the vacancy. The

Office of the Council shall provide verification of only formal compliance of the applications to established requirements and their shortlisting.

9. Elections of the member of the Council shall be set within not later than 5 working days after receipt of applications. The representatives of academia shall be notified about the date and venue of elections in accordance with the procedure established by paragraph 4 of this article. Elections shall be public.

10. Only the representatives of academia (including candidate(s) for the membership of the Council) shall be able to participate in the elections of the member of the Council with active suffrage. Elections can be held in case not less than 3 representatives of academia are present. In order to vote, the representative of academia shall have official document/certificate evidencing his/her affiliation to academia. In order to select members of the Council, the representatives of academia shall gather on the date and in the venue defined in accordance with paragraph 9 of this article.

11. The Office of the Council shall ensure only organizational and technical support for the elections of the member of the Council. It shall be inadmissible for the representatives of the Agency and/or the Office of the Council to express their opinion regarding the elections of the Council members and/or make any influence on the voting process.

12. Before commencement of elections the member of the Office of the Council - Secretary of the Meeting shall verify the identity and authority of the representatives of academia. After this, the candidate(s) for the membership of the Council shall present themselves to the representatives of academia participating in the elections for the members of the Council and this is followed by secret ballot. One representative shall vote for only one candidate. The candidate obtaining the majority of votes shall be deemed as the winner. In case of a tie, repeated ballot shall be held among these candidates under the same procedure. The member of the Office of the Council - Secretary of the Meeting shall announce the results of the ballot.

13. The results of the elections shall immediately be documented in the minutes of the representatives of academia. Minutes shall be signed by the attending representatives of academia and the member of the Office of the Council - Secretary of the Meeting.

14. Where the elections failed to be held or the member of the council could not be selected, the process of selection of the members of the Council shall start repeatedly not later than 5 working days.

15. Elections of the Council shall be held not later than 30 days before expiration of the term of the member of the Council. In case the elections failed to be held or the member of the Council could not be selected, respective Council member may, with his/her consent, be extended his/her authority under the decision taken with the majority of all the members of the Council defined in paragraph 2 of article 5 of this Procedure, however with not more than three months, prior to selection of a new member of the Council

Article 10. Time for Commencement of Authority of the Member of the Council

1. In accordance with article 6 of this Procedure, the representative of the Agency shall be deemed to be the member of the Council upon his/her written nomination by the chairperson of the Agency or, where the term of the predecessor member of the Council has not expired yet - immediately upon expiration of

the term of respective member.

2. In compliance with Article 7 of this Procedure, the representative of NGO shall be deemed to be the member of the Council from the moment he/she is elected or, where the term of the predecessor member of the Council has not expired yet - immediately upon expiration of the term of respective member.

3. In compliance with Article 8 of this Procedure, the representative of respective body shall be deemed to be the member of the Council from the moment of official submission of information to the Office of the Council about his/her nomination in writing, or, where the term of the predecessor member of the Council has not expired yet - immediately upon expiration of the term of respective member.

4. In compliance with Article 9 of this Procedure, the representative of Academia shall be deemed to be the member of the Council upon his/her election or, where the term of the predecessor member of the Council has not expired yet - immediately upon expiration of the term of respective member.

Article 11. Chairperson of the Council

1. The chairperson of the Agency shall chair the composition of the Council defined in paragraph one of article 5 of this Procedure.

2. One of the members of the Council, selected through secret ballot by the members of the Council by the majority of the nominal list with the term of 1 year, shall chair the composition of the Council defined in paragraph 2 of article 5 of this Procedure. The same member of the Council can only be elected once as the chairperson of the Council.

3. In the cases provided for in paragraph 2 of this article, if the candidate for the chairperson of the Council has less than 1 year's term left as the member of the Council, he/she will be elected as the chairperson of the Council with the remaining term. In case the chairperson of the Council, prior to expiration of his/her term of the member of the Council, will be defined/elected/nominated as the member of the Council again, his/her term on the position of the chairperson of the Council shall automatically be extended but not later than before expiration of 1 year following his/her election as the chairperson of the Council.

4. In the cases provided for in paragraph 2 of this article, any member of the Council may be the candidate for the chairperson of the Council provided he/she has not already held the position of the chairperson of the Council.

5. In the cases provided for in paragraph 2 of this article, elections of a new chairperson of the Council shall be held 10 days before expiration of term of active chairperson of the Council. Where active chairperson of the Council, as the member of the Council, is terminated his/her authority before expiry of term, elections of a new chairperson of the Council shall be held not later than 10 days from the moment of termination of authority of active chairperson of the Council.

Article 12. Qualification Criteria Established for the Membership of the Council

A member of the Council/candidate for the membership of the Council shall:

- a) possess academic bachelor's degree in law, economics or business administration;
- b) be fluent in the official language of Georgia;

Article 13. Holding a Position or Conducting Activity Incompatible with the Membership of the Council

1. For the representatives of NGOs, Georgian Chamber of Commerce and Industry and academia following shall be deemed as holding a position or conducting activity incompatible for the membership of the Council:

- a) being employed in a contracting authority or supplier, also being a person interested in participation in procurement/a bidder/a supplier;
- b) representing a contracting authority or a person interested in participation in procurement/a bidder/a supplier;
- c) rendering consultancy services to a contracting authority or a person interested in participation in procurement/a bidder/a supplier.

2. The position or activity involving carrying out public procurement and/or participation in public procurement shall be deemed as holding a position or conducting an activity incompatible for the membership of the Council for the representatives of the Agency, Competition Agency and the Office of Business Ombudsman of Georgia.

Article 14. Grounds for Termination of Authority of the Member of the Council

1. The authority of a Council member shall be terminated by expiration of appointment period except for the cases provided for in paragraph 14 of article 7 and paragraph 15 of article 9 of this Procedure.

2. Following shall be the grounds for termination of authority of a Council member before expiry:

- a) letter of resignation;
- b) recognized as missing or deceased by a court;
- c) recognized by a court as a person with limited legal capacity or acknowledged as a person receiving support, unless otherwise determined by a court decision;
- d) death;
- e) failing to perform allocated duties during a total of 3 months without a valid reason;
- f) entry into force of final judgment of conviction;
- g) holding a position or conducting activity incompatible with the membership of the Council;

- h) dismissal from NGO if the latter is the organization nominating the member of the Council;
- i) dismissal from academic or scientific position if he/she has not held other academic or scientific position;
- j) dismissal from the Agency/Competition Agency/Georgian Chamber of Commerce and Industry.

3. It shall be inadmissible to terminate the authority of the member of the Council with the ground other than of those provided for in paragraphs 1 and 2 of this article.

4. In the cases provided for in paragraph 2 of this article, a Council member shall be terminated his/her authority under the decision taken with the majority of the composition of the Council defined in paragraph one of article 5 of this Procedure, while in case of a representative of the Competition Agency, Georgian Chamber of Commerce and Industry, Office of the Business Ombudsman of Georgia or academia – authority shall be terminated under the decision taken with the majority of the composition of the Council defined in paragraph 2 of article 5 of this Procedure. In such cases, the Council member whose termination is under discussion, shall not participate in the decision-making.

5. In case a Council member is terminated his/her authority, the composition of the Council shall be made up in line with the procedures defined by the Law and this Procedure. Where authority of the Council member is terminated before expiry, the process of defining/electing/nominating the Council member shall start not later than 10 days from the moment of termination of the term of the respective member of the Council.

Article 15. Office of the Council

1. The Agency shall facilitate the activities of the Council technically; with this aim, respective structural unit of the Agency shall fulfil the functions of the Office of the Council.

2. The Office of the Council shall:

- a) review the issue of deeming an appeal eligible;
- b) conduct internal procedures for preparation of the review of disputes;
- c) organize the Council's sittings;
- d) draw up minutes of the Council's sittings;
- e) provide technical support in the process of defining/electing/nominating the Council members;
- f) handle internal documentation of the Council;
- g) exercise other functions in accordance with this Law and this Rule.

3. It shall be inadmissible to interfere in the activities of the Office of the Council. The Office of the Council shall fulfill the instructions of only the Council related to ongoing activities of the Council.

Chapter III. Appeal

Article 16. Right and Form of Appeal

1. A person interested in participation in procurement or a bidder shall have the right to appeal a decision/action of a contracting authority and/or tender/competition commission in the Council in compliance with the Law and this Procedure.

2. In the cases provided for in paragraph one of this article:

a) a person interested in participation in procurement or a bidder shall have the right to appeal the terms of tender/contest (including decision/action related to tender terms);

b) from the moment when electronic tender/contest acquires the status “Bidding Finished” till contract award, the decision/action of a contracting authority and/or tender/competition commission can be appealed by the bidder who considers that the procedures established by the Law and relevant normative acts were breached during the procurement process and his/her rights were violated.

3. Decision/action of a contracting authority and/or tender/competition commission shall not be appealed, if the complaint relates to:

a) selection of the means of procurement under the rules established by the Law and relevant normative acts;

b) decision regarding termination of procurement procedure taken in compliance with the procedures established by the Law and relevant normative acts;

c) suspension of procurement procedure in compliance with the procedures established by the Law and relevant normative acts;

d) expediency of defining the quality total score weight and price weight of design contest notice, quality assessment criteria, expediency of defining their types and weights; also, if the complaint relates to the evaluation of the competition commission regarding the subjective criteria of quality assessment of design contest notice.

4. Appeal shall be lodged with the Council electronically through a system button in the tender/contest notice in compliance with the annex to this Procedure. It is necessary to register in the system as a “Supplier” in order to lodge an appeal.

Article 17. Timeframes for Appeal

The following timeframes shall be established for lodging an appeal with the Council:

- a) a statement regarding the terms of a tender/contest (including amendments to these terms) may be appealed from the moment of assigning the status “Announced” to an electronic tender/contest till assigning the status “Bidding Commenced”;
- b) any clarification of a tender/competition commission to the question asked through the system’s Q&A Module prior to assigning the status “Bidding Commenced” to an electronic tender/contest or refrain from the clarification thereof, can be appealed within the period of 2 days from the day when tender/competition commission made or was to make the clarification thereof;
- c) From the moment of assigning the status “Bidding Finished” to an electronic tender/contest till contract award, the decision/action of a contracting authority and/or tender/competition commission may be appealed within 5 days from the moment of uploading the respective decision to the system, or, in case of an action, of performing the respective action by the contracting authority and/or tender/competition commission, but not later than before awarding a contract as a result of an electronic tender/contest.

Article 18. Fee for filing an appeal

1. Fee shall be set for filing an appeal to the Council, except for appealing the terms of a tender/contest (including decisions/actions related to tender/contest terms); the amount of the fee shall compound to 2% of estimated value of procurement, but not less than 100 GEL and not more than 500 GEL.
2. Fee for filing an appeal shall be paid in the moment of filing an appeal via plastic card; during the process the System shall block the respective amount of the fee for filing an appeal. The money thereto shall be unblocked immediately after expiration of 30 days from submitting the fee for filing an appeal except for the cases when the appeal is not satisfied. In such cases, the fee for filing an appeal shall be transferred to the state budget.

Article 19. Deeming an Appeal Eligible

1. The Office of the Council shall review the issue of deeming an appeal eligible and respectively, it will deem an appeal eligible/ineligible except for the cases provided for in paragraph 8 of this article.
2. With a view to establish eligibility of an appeal, the Office of the Council shall immediately, but not later than the following working day, review compliance of an appeal submitted to the Council with the requirements established by article 23¹ of the Law and this Procedure.
3. If an appeal complies with the requirements established by article 23¹ of the Law and this Procedure, the Office of the Council shall deem an appeal eligible and shall immediately publish respective information about the aforementioned to the electronic module.
4. Where an appeal is submitted without following the instructions of the annex of this Procedure, except

for the circumstances provided by in paragraph 5 of this article, the Office of the Council shall immediately, but not later than the following working day, notify the complainant about this through electronic module and shall define time limit for correcting the deficiency, which shall be not later than the following working day. If the complainant fails to correct the deficiency within the defined time limit, the system will automatically deem the appeal ineligible. If the appeal is specified, the Office of the Council shall review the issue of deeming the appeal eligible immediately, but not later than the following working day.

5. An appeal shall be deemed ineligible if:

- a) it does not relate to a decision/action of a contracting authority and/or tender/competition commission;
- b) there is no subject of dispute;
- c) the time limit for submitting an appeal has elapsed;
- d) it relates to the issue regarding which there is a decision of the Council between the same parties on the same subject and the same grounds;
- e) it relates to the issue the Council is already reviewing between the same parties on the same subject and the same grounds;
- f) a dispute between the same parties on the same subject and on the same grounds is pending in court.
- g) the issue indicated in the appeal is under the jurisdiction of a court;
- h) it relates to the issues provided for in paragraph 3 of article 16 of this Procedure;
- i) the complainant does not specify the appeal in compliance with the requirements established by this Procedure or specifies incompletely;
- j) in compliance with the paragraphs 2.2. and 2.3 of “Instructions for Filling up an Appeal” established by the annex of this Procedure, the content of the appeal does not have respective form of selected appeal.

6. In the cases provided for in paragraph 5 of this article, the Office of the Council shall deem an appeal ineligible and shall publish the information in this regard on the electronic module not later than the following working day.

7. The Office of the Council shall review the issue of eligibility of an appeal (including specified appeal) submitted to the Council at 18:00 p.m. or later, on the following working day

8. In case the grounds for ineligibility of an appeal will be discovered after deeming it eligible, the Office of the Council shall, in compliance with the rules established by this article, deem the appeal ineligible. In case the grounds for ineligibility of an appeal will be discovered at the Council meeting or after it, the Council shall deem the appeal ineligible.

9. After deeming an appeal eligible, the Office of the Council shall, prior to the Council meeting within a reasonable timeframe, notify the members of the Council (respective composition of the Council) in this

regard in compliance with the paragraphs 3 and/or 4 of article 4 of this Procedure and shall indicate regarding the possibility of acquainting oneself with the appeal and related documents (if any).

Article 20. Suspension of Procurement Procedures

1. Procurement procedures appealed immediately upon deeming an appeal eligible shall automatically be suspended after the end of e-tendering.
2. After deeming an appeal eligible, a contracting authority shall be obliged not to take any decision or perform any action within the timeframes of reviewing an appeal related to appealed procurement procedures.
3. Contracting authority shall also be obliged not to announce a tender on procurement of the same object of procurement or suspend already announced repeated e-tender/contest (if any).
4. In the cases provided for in this article, procurement procedures shall also be suspended for the tenderer(s) as well.
5. Throughout dispute, in a state of urgency, a contracting authority shall be entitled to carry out the procurement resulting from urgent necessity in compliance with the procedure established by the Law.

Article 21. Withdrawing an Appeal

1. A complainant shall be authorized to withdraw an appeal any time before the Council takes decision.
2. A complainant shall notify the Office of the Council regarding withdrawing an appeal in writing.
3. Once an appeal is withdrawn, it shall not be reviewed any longer.
4. The Office of the Council shall publish respective information regarding withdrawal of an appeal on the electronic module not later than the following working day.

Chapter IV. Review of an Appeal

Article 22. Time and Venue for Council meeting

1. The day and time for the review of an appeal (time for the Council meeting) shall be scheduled by the chairperson of the Council at the recommendation of the Office of the Council.
2. Meeting of the Council shall be held within the timeframe established for taking a decision by the Council. The Council shall be entitled to hold a preparatory meeting.
3. Time and venue of the Council meeting shall be communicated to the parties and interested persons (if any) through electronic module.

4. Meeting of the Council may be held through video conference during which audio-video connection of all the participants of the Council meeting, as well as possibility of sharing documents online shall be ensured.

Article 23. Council Meeting

1. The chairperson of the meeting shall open, conduct and close the meeting.

2. The chairperson of the Council shall chair the meeting. Where the chairperson of the Council is absent, in case of the composition defined in paragraph one of article 5 of this Procedure, acting chairperson of the Agency shall chair the Council meeting; while in case of the composition defined in paragraph 2 of article 5 of this Procedure, one of the Council members defined in writing by the chairperson of the Council shall chair the meeting.

3. When starting the Council meeting, the chairperson of the meeting shall announce the composition of the Council.

4. In case of the composition defined in paragraph one of article 5 of this Procedure, the Council shall be deemed authorized if it is attended by not less than three members, and in case of the composition defined in paragraph 2 of article 5 of this Procedure – when it is attended by not less than five members.

5. After the chairperson of the meeting announces the composition of the Council, a member of the Office of the Council shall provide the members of the Council with information regarding the parties, the subject of dispute, persons attending the sitting and their authority.

6. The Council shall review an appeal at an open session except for the cases provided for by the legislation of Georgia. The chairperson of the meeting shall be entitled to limit the number of attendees to the meeting of the Council in view of the number of seats available.

7. Absence of parties and interested persons (if any) from the Council meeting invited in accordance with the established procedure shall not interfere with the review of an appeal.

8. Parties and interested persons may attend the Council meeting personally or be represented by their representatives. A representative shall be obliged to present a mandate - a document verifying his/her representation.

9. At the Council meeting a secretary of the meeting shall confirm presence of the representatives of complainant and defendant organization.

10. In case of participation in the Council meeting through a video conference, the staff member of the organization from where the video conferencing takes place, shall check the identity of attendees.

11. Photo, audio or video shooting of the Council meeting shall be allowed only with preliminary consent of the chairperson of the meeting.

12. Review of an appeal at the Council meeting shall start with the explanation of the complainant. The complainant shall report to the Council about the facts and circumstances referred to in an appeal, also

about the evidence based on which he/she is seeking for satisfaction of an appeal.

13. After the complainant's explanation, the Council shall hear the explanation of a defendant. The defendant shall report to the Council whether or not he/she recognizes an appeal and in which part; where the defendant does not recognize an appeal, he/she shall report which specific facts, circumstances and evidence his/her position is based on.

14. In case an interested person is invited to the Council meeting, after the complainant's and defendant's explanations the Council shall hear the explanation of the interested person. The interested person shall report to the Council about his/her opinion regarding the issue to be reviewed, also about the facts, circumstances and evidence his/her position is based on.

15. Based on the circumstances of the case, a specialist, expert and/or interpreter may be invited to the Council meeting by the request of a respective party or by the initiative of the Council. The issue of inviting a specialist, expert and/or interpreter to the Council meeting shall be decided by the Council. Expenses for the specialists', expert's and/or interpreter's service shall be imposed on the person who solicits for their invitation; if a specialist, expert and/or interpreter was invited by the initiative of the Council, expenses shall be imposed on the parties equally.

16. In case a specialist and/or expert was invited to the Council meeting, after hearing the opinions of parties and interested persons (if any), the Council shall hear the opinion of a specialist and/or expert.

17. After hearing the explanations, parties and interested persons (if any) may ask questions to each other and also to an expert and/or specialist (if any) at the time defined by the chairperson of the Council. A Council member shall be entitled to ask questions any time.

18. Any person attending the Council meeting shall be obliged to keep order. The chairperson of the meeting shall ensure keeping order at the Council meeting. The chairperson of the meeting shall be authorized to expel the person disrupting order.

19. The meeting of the Council shall be documented in the minutes of the meeting drawn up by the member of the Office of the Council - secretary of the meeting.

Chapter V. Resolving an Appeal

Article 24. Taking a Decision

1. After the Council meeting, the Council members shall hold a meeting to take a decision.

2. A decision shall be made based on the majority of votes of attending members of the Council. In case of the tie, the vote of the chairperson of the meeting shall be decisive.

3. A member of the Council shall have no right to abstain from voting. A member of the Council, who does not agree with the decision, may provide a different opinion in writing, which shall be enclosed to the decision.

4. A member of the Council shall evaluate presented evidence based on his/her belief, which shall be based on their full, comprehensive and objective review.

5. The Council shall review an appeal based on the provisions indicated therein. The Council shall be authorized to discuss such other violations, which have taken place during decision-making or performing an action and which have not been indicated in the appeal.

6. All members of the Council, who are attending the Council meeting and participating in decision-making process, including the member of the Council with a different opinion, shall sign the decision of the Council.

7. If attending member of the Council is absent during decision-making, it shall be indicated in the decision.

8. In the cases provided for in paragraph 4 of article 22 of this Procedure, a member of the Council participating in a video conference shall be submitted the draft decision by the Office of the Council via e-mail. The submitted notification shall contain the positions expressed by each member of the Council during the meeting.

9. In the cases provided for in paragraph 8 of this article, a member of the Council participating in a video conference shall confirm via e-mail that he/she agrees with the draft decision of the Council submitted to him/her which shall be equal to signing the decision by him/her.

Article 25. Final Decision

1. After detailed examination of an appeal and related circumstances, the Council shall be authorized to:

- a) fully satisfy an appeal;
- b) partially satisfy an appeal;
- c) not to satisfy an appeal.

2. In case of full or partial satisfaction of an appeal, the Council shall be authorized to:

- a) indicate its wrong behavior to a contracting authority and request from it to perform procurement procedures following the legislation of Georgia;
- b) request from a contracting authority to examine or annul taken decision;
- c) raise the issue of liability of a participant of procurement before respective authorities determined by the law of Georgia where the participant of procurement breaches the requirements of law.

Article 26. Content of a Decision

1. Decision of the Council shall include an introduction, description, motivation and resolution parts.

2. Following shall be referred to in the introduction of the decision: designation of the Council, title of the

decision, date and venue of taking a decision, composition of the Council, secretary of the meeting, parties and their authorized representatives, interested persons and their authorized representatives (if any), subject-matter of dispute, claim of an appeal.

3. Attitudes of a complainant and a defendant (if any), opinion of an interested person (if any), opinions of a specialist and an expert (if any) shall be referred to in the description part of a decision.

4. Motivation part of a decision shall reflect the circumstances established by the Council, evidence on which the conclusions of the Council are based, opinions through which the Council rejects this or that circumstance or evidence, legal assessment of the Council and legislation by which the Council governed itself.

5. Resolution part of a decision shall contain summing up conclusion of the Council regarding deeming an appeal ineligible, fully satisfying an appeal, partially satisfying an appeal or rejection to satisfy an appeal; it shall also contain time limits and rules for appealing the decision.

Article 27. Publication of a Decision

The decision of the Council shall be published upon promulgation on the electronic module, shall be public and deemed to be delivered to the party and interested person (if any).

Article 28. Execution of a Decision

1. It shall be mandatory to execute a decision of the Council immediately.

2. Any interested person shall be entitled to address the Agency and provide it with the information on contracting authority's failure or delay of execution of the Council's decision.

3. Failure to execute the Council's decision shall lead to the liability established by the law.

Article 29. Appealing a Decision

The Council's decision shall be appealed in the court in compliance with the procedures established by the legislation of Georgia.

Chapter VI. Transitional Provisions

Article 30. First Meeting of the Council

After entry into force of this Procedure, when the composition of the Council defined in paragraph 2 of article 5 of this Procedure is made up of not less than 7 members, the first meeting of the Council shall be held; at the meeting the chairperson of the composition of the Council defined in paragraph 2 of article 5 of this Procedure shall be selected.

Article 31. Acting Composition of the Council

Members of the Council composed prior to entry into force of this Procedure, shall continue to exercise their powers for the remaining term in compliance with paragraph one of article 5 of this Procedure. After expiration of the term of respective member of the Council a new member of the Council shall be defined/elected/nominated in compliance with the procedures determined by this Law and this Procedure.

Electronic appeal form and instruction for filling it up

1. Appeal form

1.1. Appeal shall be lodged with Public Procurement-related Dispute Resolution Council (Hereinafter – the Council) in an electronic form (See graphic N°1)

Graphic N°1

Appeal # * * *

Current status of an appeal

* * *

Complainant

* * *

of disputed
procurement

* * * 

Contracting authority

* * *

Date and venue of reviewing an appeal

* * *

Interested party

* * *

Category of procurement (CPV)

* * *

Appealed

* * *

1. Please, specify what your appeal relates to

* * *

2. Please, indicate relevant norm of a normative act (article, paragraph/part, sub-paragraph) to which [the appealed statement of tender/design contest terms | disputed decision/action of a tender/design contest commission¹] contradicts.

* * *

3. Please, provide detailed justification why [the statement of tender/design contest terms | disputed decision/action of a tender/design contest commission²] appealed by you contradicts the legislation.

* * *

4. Indicate your claim.

* * *

Person filing an appeal

* * *

ID No.:

* * *

Phone number

* * *

Attachments

* * *

History of statuses

* * *

* * *

1.2. Following data are automatically generated in an appeal form:

- number of an appeal;

¹ Where an appeal applies to tender/design contest terms, in Question #2 of an appeal form following words will flash: “Appealed statement of tender/design contest terms”; and if an appeal applies to decision/action of a tender/design contest commission - following words will flash: “Disputed decision/action of a tender/design contest commission”.

² Where an appeal applies to tender/design contest terms, in Question #3 of an appeal form following words will flash: “Statement of tender/design contest terms”; and if an appeal applies to decision/action of a tender/design contest commission - following words will flash: “Disputed decision/action of a tender/design contest commission”.

- current status of an appeal - “Appeal Submitted“;
- designation of a complainant and a contracting authority, their addresses, phone numbers and e-mail;
- category of procurement (CPV code) – classifier (CPV) division code will be generated;
- number of a disputed appeal;
- history of statuses.

1.3. Appeal number is generated in an appeal form under the following rule:

- where estimates value of disputed procurement is below the monetary thresholds established by the EU Directives in the field of public procurement, appeal number shall comprise the combination DIS000000000_00(***) , where the first three permanent symbols “DIS” are the abbreviation of an appeal, following nine figures “000000000” – number of disputed procurement without abbreviation (for instance, 180000001), following two figures “00” – sequence of an appeal for the disputed procurement (for instance, 01), and the final three symbols in brackets “ *** “ – abbreviation of a disputed procurement (for instance, NAT);
- where estimates value of disputed procurement is equal or exceeds the monetary thresholds established by the EU Directives in the field of public procurement, appeal number will be generated according to the above-mentioned principle with the difference that “DET” will be used as the abbreviation of an appeal, instead of “DIS”.

1.4. After filing an appeal to the Council, the Office of the Council shall indicate the following in an appeal form:

- current new status of an appeal;
- date and venue of reviewing an appeal;
- interested party, where necessary. In the event of indication of an interested party, designation of an interested party, as well as its address, phone number and e-mail are automatically generated.

2. Instruction for filling up an appeal

2.1. An appeal shall be filed to the Council through Unified Electronic System of Public Procurement (hereinafter – the System), by clicking an “Appeal” button in a tender/design contest notice (See graphic №2). In order to file an appeal, it is required to sign in on the System by a supplier’s profile.

Graphic №2



2.2. After clicking the button “Appeal”, the tenderer has to specify what he/she is appealing in the Council, he/she shall also indicate ID No. of a physical entity submitting an appeal, his/her identity and phone number. After filling up the fields, it is required to press the “Change” button (See graphic №3).

Graphic №3

ახალი საჩივარი

საჩივრდება:

საჩივრის წარმომდგენი:

პირადი ნომერი



სახელი, გვარი

ტელეფონის ნომერი

ჩანწერა

New appeal

Appealed:

Person filing an appeal:

ID No.

Name/last name

Phone:

Change

- 2.3. Depending on what the complainant specifies as the object of an appeal (tender/design contest terms (I) or decision/action of a tender/design contest commission (II)), after pressing the “Change” button respective form of an appeal will open.
- 2.4. After pressing the “Change” button, it will be impossible to change already specified object of an appeal.
- 2.5. If the complainant selects “Tender/design contest terms” as the object of an appeal, the following form of an appeal will open (See graphic N^o4).

Graphic N^o4

1. Indicate specific statement of tender/design contest terms which, you think, contradicts legislation.

In this field quote only that(those) specific statement(s) of tender/design contest notice and/or documentation and/or indicate that(those) part(s) of a tender/design contest notice and/or documentation (article, paragraph, sub-paragraph, position, para, etc.) which, you think, contradict the legislation

Please, mind that in this field you do not provide justification why the statement indicated by you contradicts the legislation. You just indicate (quote) that(those) specific statement(s) of a tender/design contest notice and/or documentation which, you think, contradict the legislation.

Please, mind that the amount of symbols in this field is limited (maximum 2 000 symbols).

ჩანწერა

Change

2. Indicate relevant norm of a normative act (article, paragraph/part, sub-paragraph) to which, you think, the appealed statement of a tender/design contest notice contradicts.

In this field indicate the title of a specific normative act and corresponding norm (article, paragraph/part, sub-paragraph) to which, you think, the appealed statement of a tender/design contest notice and/or documentation contradicts. Please, mind that the amount of symbols in this field is limited (maximum 1 000 symbols).

 ჩანგრა

Change

3. Please, provide detailed justification why the statement of a tender/design contest documentation appealed by you contradicts the legislation.

In this field indicate specific circumstances which you consider to be important to ground your position. These circumstances must prove that the appealed part of a tender/design contest notice and/or documentation contradicts the legislation.

You have to formulate the circumstances clearly and briefly. The text must contain reference immediately to the content of the circumstances which you are seeking to be reviewed by the Council. In order to confirm each of the circumstances you specified, you are obliged to indicate all the information/documentation available and known to you.

Do not indicate the circumstances which have no significance for the case and/or which cannot influence the resolution of dispute.

Please, mind that the amount of symbols in this field is limited (maximum 6 000 symbols).

 ჩანგრა

Change

4. Indicate the claim.

A complainant is obliged to specify the claim of an appeal. In this field should be indicated what specifically you request from the Council.

Failure to indicate the claim, incomplete indication or incompliance with the content of an appeal is deemed as a deficiency of an appeal.

Please, mind that the amount of symbols in this field is limited (maximum 1 000 symbols).

 ჩანგრა

Change

Attention: After filling up/editing each of above mentioned fields it is required to press relevant “Change” button

2.6. Where a complainant chooses “Decision/action of a tender/design contest commission” as an object of appeal, the following form of an appeal will open (See graphic №5)

Graphic №5

1. Please, specify what your appeal relates to:

Complainant has to choose one of the following options according to the content of an appeal.

▼

სატენდერო/საკონკურსო კომისიის გადაწყვეტილებას

სატენდერო/საკონკურსო კომისიის ქმედებას

Decision of a tender/design contest commission

Action of a tender/design contest commission

2. Indicate relevant norm of a normative act (article, paragraph/part, sub-paragraph) to which, you think, the appealed decision/action of a tender/design contest commission contradicts.

In this field indicate the title of a specific normative act and corresponding norm (article, paragraph/part, sub-paragraph) to which, you think, the appealed decision/action of a tender/design contest commission contradicts.

Please, mind that the amount of symbols in this field is limited (maximum 1 000 symbols).

ჩანერა

Change

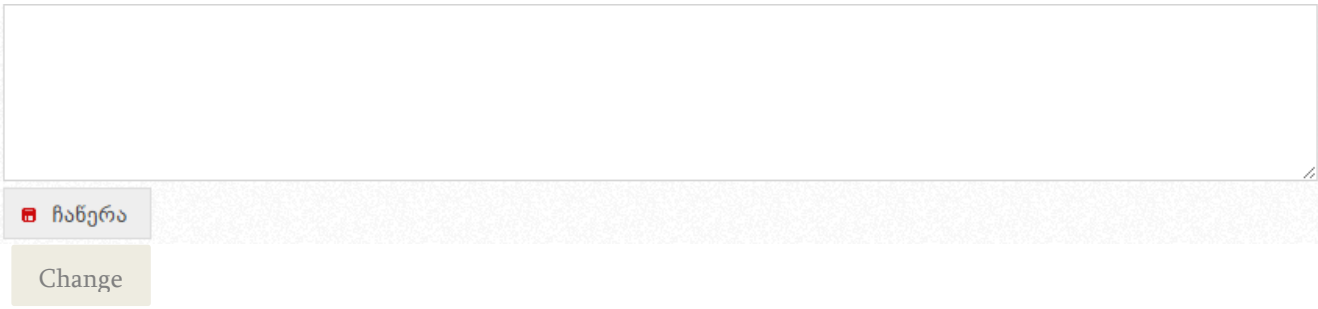
3. Please, provide detailed justification why the appealed decision/action of a tender/design contest commission contradicts the legislation.

In this field indicate specific circumstances which you consider to be important to ground your position. These circumstances must prove that the decision taken by the appealed meeting minutes and/or action of a tender/design contest commission contradicts the legislation.

You have to formulate the circumstances clearly and briefly. The text must contain reference immediately to the content of the circumstances which you are seeking to be reviewed by the Council. In order to confirm each of the circumstances you specified, you are obliged to indicate all the information/documentation available and known to you.

Do not indicate the circumstances which have no significance for the case and/or which cannot influence the resolution of dispute.

Please, mind that the amount of symbols in this field is limited (maximum 8 000 symbols).

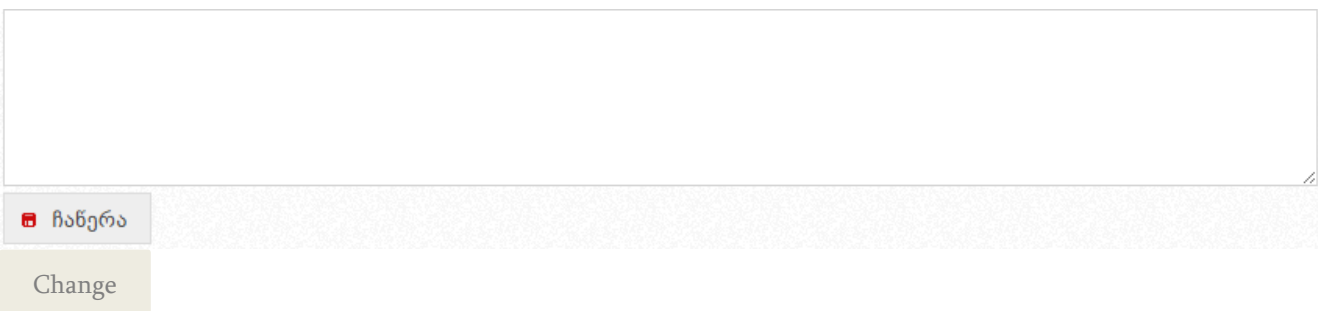


4. Indicate the claim.

A complainant is obliged to specify the claim of an appeal. In this field should be indicated what specifically you request from the Council.

Failure to indicate the claim, incomplete indication or incompliance with the content of an appeal is deemed as a deficiency of an appeal.

Please, mind that the amount of symbols in this field is limited (maximum 1 000 symbols).



Attention: After filling up/editing each of above mentioned fields it is required to press relevant “Change” button



2.7. Depending on what an appeal applies to (decision of a tender/design contest commission (I), or action of a tender/design contest commission (II)), respective fields will additionally open in an appeal form referred to in paragraph 2.6 of this instruction (graphic №5) which a complainant has to fill up (See graphics №6 and №7).

Graphic №6

1.1. Under which minutes (indicate respective requisites) did a tender/design contest commission take the disputed decision?

When appealing a disputed decision of a tender/design contest commission, it is obligatory to indicate in this field the specific meeting minutes of a tender/design contest commission under which the tender/design contest commission took a disputed decision.

Please, mind that in this field you do not provide justification why the appealed decision contradicts the legislation.

You just indicate the respective meeting minutes of a tender/design contest commission with respective requisites (date of issuance, number, date of publication on the system).

Please, mind that the amount of symbols in this field is limited (maximum 2 000 symbols).

ჩანგრა

Change

1.2. Indicate specific statement of tender/design contest terms and/or relevant norm of a normative act (article, paragraph/part, sub-paragraph) compliance/incompliance with which was established by a tender/design contest commission by a disputed decision.

In this field you have to indicate specific statement of a tender/design contest notice and/or documentation (article, paragraph, sub-paragraph, para, position, etc.) and/or respective norm of a normative act (article, paragraph/point, sub-paragraph) compliance/incompliance with which a tender/design contest commission has established by a disputed decision (meeting minutes).

Please, mind that in this field you do not provide justification why the specific decision taken by the meeting minutes of a tender/design contest commission contradicts a tender notice/documentation and/or legislation. You just indicate specific statement of a tender/design contest notice/documentation and/or norm of a normative act on which a tender/design contest commission based itself when taking a disputed decision. Please, mind that the amount of symbols in this field is limited (maximum 3 000 symbols).

ჩანგრა

Change

Graphic №7

1.1. Indicate information about the action of a tender/design contest commission contradicting the legislation.

In case of appealing an action of a tender/design contest commission, in this field should be indicated the information about only that(those) specific action(s) (action or inaction) which, you think, contradict(s) legislation.

Action of a tender/design contest commission covers such an action or inaction which does not imply taking a decision (meeting minutes of a tender/design contest commission). Please, mind that in this field you do not provide justification about incompliance of a disputed action with legislation. You just indicate information about disputed action. Please, mind that the amount of symbols in this field is limited (maximum 2 000 symbols).

ჩანგრა

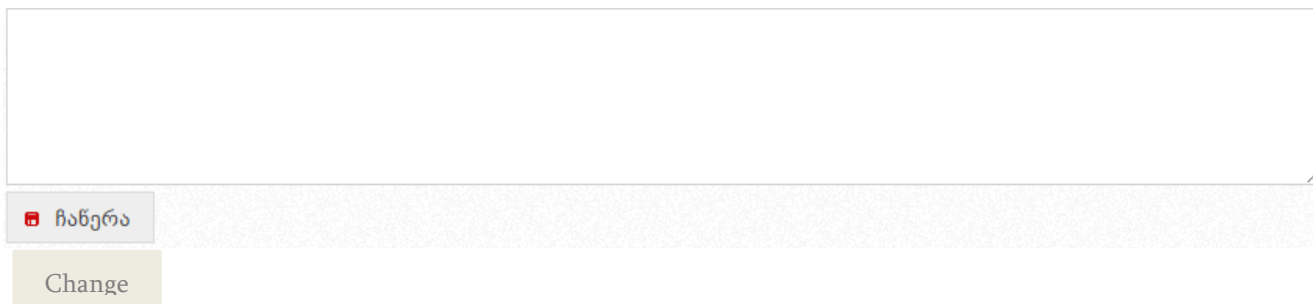
Change

1.2. Indicate specific statement of tender/design contest terms and/or relevant norm of a normative act (article, paragraph/part, sub-paragraph) to which the disputed action of a tender/design contest commission contradicts.

In this field you have to indicate specific statement of a tender/design contest notice and/or documentation (article, paragraph, sub-paragraph, para, position, etc.) and/or respective norm of a normative act (article, paragraph/part, sub-paragraph) to which the disputed action of a tender/design contest commission contradicts.

Please, mind that in this field you do not provide justification why the specific action of a tender/design contest commission appealed by you contradicts a tender notice/documentation and/or legislation. You just indicate specific statement of a tender/design contest notice/documentation and/or norm of a normative act to which disputed action of a tender/design contest commission contradicts.

Please, mind that the amount of symbols in this field is limited (maximum 3 000 symbols).



A screenshot of a web interface showing a large, empty text input field. Below the field is a button with a red square icon and the text 'ჩანგრა' (Change). Below that is another button with the text 'Change'.

2.8. After filling up a relevant appeal form, by pressing “Finish” button a complainant can upload/attach additional documentation in PDF format. Size of each document must not exceed the sizes defined by the system (See graphic №8).

Graphic №8

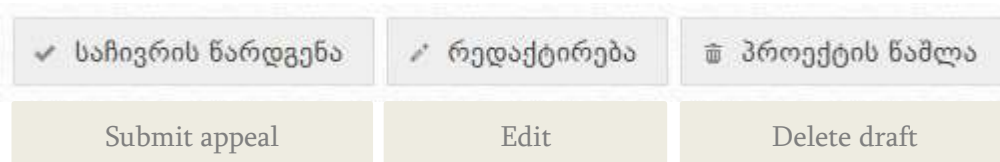


A screenshot of a file upload interface. It features a button labeled 'Choose File' next to the text 'No file chosen'. To the right is a button with a document icon and the text 'მიმაგრება' (Attach). Further right is a button labeled 'Attach'.

2.9. After filling up a respective form of an appeal, by pressing “Finish” button, draft appeal will be created which does not imply submission of an appeal to the Council. In this stage, a complainant can do the following (See graphic №9):

- submit an appeal to the Council by pressing “Submit appeal” button;
- edit draft appeal by pressing “Edit” button;
- delete draft appeal by pressing “Delete draft” button.

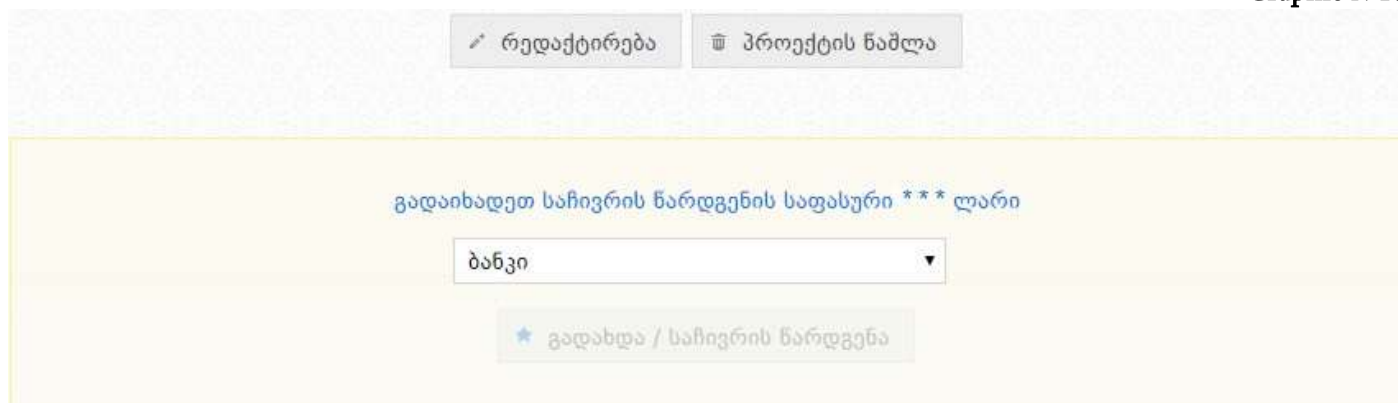
Graphic №9



A screenshot of three buttons arranged horizontally. The first button has a checkmark icon and the text 'საჩივრის წარდგენა' (Submit appeal). The second button has a pencil icon and the text 'რედაქტირება' (Edit). The third button has a trash can icon and the text 'პროექტის წაშლა' (Delete draft). Below each button is a corresponding label: 'Submit appeal', 'Edit', and 'Delete draft'.

2.10. A complainant shall be obliged, in the cases defined by the law, to pay a fee for filing an appeal (See graphic №10).

Graphic №10



A screenshot of a payment form. At the top, there are two buttons: 'რედაქტირება' (Edit) and 'პროექტის წაშლა' (Delete draft). Below them is a text field with the text 'გადახდეთ საჩივრის წარდგენის საფასური *** ლარი' (Pay the fee for filing the appeal *** Lari). Below the text field is a dropdown menu with the text 'ბანკი' (Bank). At the bottom, there is a button with a star icon and the text 'გადახდა / საჩივრის წარდგენა' (Payment / Filing the appeal).



Pay fee for filing an appeal *** GEL

2.11. After pressing “Pay/Submit appeal” button, a complainant shall be obliged to pay the fee for filing an appeal via a plastic card.

2.12. In order to file an appeal to the Council, it is required to fill up all the mandatory fields of an appeal form.

2.13. To search for draft appeal(s) and appeal(s) already submitted to the Council, press “Appealed procurements” button (See graphic №11), after opening the appealed tender/design contest press “Appeals” button in its tender/design contest notice (See graphic №12).

Graphic №11



Graphic №12



2.14. Draft appeal that is not filed to the Council under established procedure, will automatically be deleted after expiration of 15 days after its last edition.

2.15. After pressing “Submit appeal” button, an appeal shall be deemed submitted to the Council; after this, the Office of the Council shall, under established procedure, review eligibility of an appeal. In the cases defined by the law, if a complainant is obliged to pay a fee for filing an appeal, an appeal shall be deemed submitted to the Council after pressing “Pay/Submit appeal” button and after paying respective amount of the fee for filing an appeal.

2.16. In case the Office of the Council requests the complainant to specify an appeal, it is possible to search for an appeal to be specified under the procedure referred to in paragraph 2.13 of this instruction; after this, an appeal to be specified will be opened (See graphic №13).

Graphic №13

საჩივრები მიმდინარე შესყიდვაზე			
საჩივრის #	სტატუსი	თარიღი	მომწივანი
...	დასაბუსტებელი	***	***

Appeals on current procurement			
# of an appeal	Status	Date	Complainant
...	To be specified

2.17. A complainant shall specify those fields of an appeal form in regard to which the Office of the Council established deficiency (See graphic №14).

Graphic №14

საჩივრები მიმდინარე შესყიდვაზე

საჩივრის #	სტატუსი	თარიღი	შომჩივანი
...	დასაბუსტებელი	***	***

საჩივარზე დადგენილი ხარვეზი:

Appeals on current procurement			
# of an appeal	Status	Date	Complainant
...	To be specified

Deficiency in regard to an appeal:

2.18. To edit an appeal, press “Edit” button; after pressing this button, appeal form (field(s)) must be filled up (specified) in compliance with this instruction. A complainant has to submit specified appeal to the Council by pressing “Submit specified appeal” button (See graphic №15).

Graphic №15

დაბუსტებული საჩივრის წარდგენა	რედაქტირება
Submit specified appeal	Edit