

(unofficial translation)

(Legislative Bulletin of Georgia III, 30.11.2010 N 156 Art. 2213)

Registered at the Ministry of Justice of Georgia

Registration Code

010.240.060.21.014.016.005

**The Order of the Chairman of the State Procurement Agency No 11
November 30, 2010**

**On the Rules of Activity of the Procurement Related Disputes Resolution Board
under the State Procurement Agency**

Pursuant to Article 23(4¹) of the Law of Georgia on State Procurement, I hereby order:

1. The Rules of Activity of the Procurement Related Disputes Resolution Board under the State Procurement Agency along with the enclosed Appendix (Appendix No 1) shall be approved.
2. The Order shall become effective upon publication.

T. Urjumelashvili

**The Rules of Activity of the Procurement Related Disputes Resolution Board under
the State Procurement Agency**

Article 1. General Provisions

1. The Rules of Activity of the Procurement Related Disputes Resolution Board under the State Procurement Agency (hereinafter – the Rules) have been developed in accordance with Article 23 (4¹) of the Law of Georgia on State Procurement (hereinafter – the Law) and set forth the rules of activity and legal basis for the Procurement Related Disputes Resolution Board (hereinafter – the Board) under the State Procurement Agency (hereinafter – the SPA). The scope of the Rules comprises procurement procedures conducted through a simplified electronic tender and an electronic tender.
2. The purpose of the review of procurement related disputes is resolution thereof swiftly and fairly based on the principles of equality of rights of the parties.
3. In its work the Board is guided by the Constitution of Georgia, the Law, the present Rules and other legislative and sub-legal acts.

4. Any information related to disputes can be received/sent electronically, through an official website www.procurement.gov.ge of the SPA. In such case the mentioned information will be deemed officially received/sent upon posting thereof on the website.

5. A complaint is considered received from the instance it is deemed acceptable in accordance with these Rules.

Article 2. The right to appeal

1. An entity willing to participate in procurement or a bidder prior to awarding a contract on state procurement may appeal against an action of a procuring entity or tender committees at the SPA, at the Board, in case it deems that in the process of procurement procedures the rules set forth under the Law and relevant normative acts were breached and/or his/her rights were infringed upon.

2. In case an entity willing to participate in procurement or a bidder appeals against an action of a procuring entity the suspension of procurement procedures shall be allowable only following the completion of electronic reverse auction.

3. An action is not subjected to appealing if the complaint concerns:

- a) the selection of the method of procurement in compliance with the rules established under the Law and relevant normative acts;
- b) the decision of a procuring entity with regard to suspension or cancellation of procurement procedure that has been taken according to the rule set forth under the Law and relevant normative acts;

4. A complaint can be submitted to the SPA electronically through the SPA official website www.procurement.gov.ge. The complaint must have legal grounds and be submitted to the SPA using the Form approved under Appendix No 1.

5. The losses reimbursable to the complainant as a result of the resolution of the dispute must be limited to the reimbursement of costs related to the participation in the procurement and must not envisage the reimbursement for estimated profit.

Article 3. The Board

1. The Board shall be comprised of six members. The Board is made up of the representatives of the SPA and the NGO sector (civil society) based on the parity principle.

2. The Board is chaired by the chairman of the SPA. The Chairman of the SPA appoints two members of the Board from among the SPA employees.

3. Three representatives of the NGO sector (civil society) are selected by as many representatives of the NGO sector (civil society) as possible to serve as the members of the Board under the principle

of rotation, for a one year term and the list of selected members is submitted to the secretariat of the Board.

Article 4. The Structure of the Secretariat of the Board and the Rule of Activity thereof

1. Under the individual administrative-legal act of the Chairman of the SPA the secretariat of the Board is established that is comprised of the employees of the SPA. The secretariat of the Board carries out the internal procedures of preparing the dispute review.

2. The secretariat of the Board, within the scope of its competence:

a) to determine the admissibility of a complaint reviews the conformity of a complaint and supporting documentation submitted to the SPA with the requirements set forth under Article 23 of the Law and these Rules. If the complaint is recognized inadmissible a complainant will immediately be informed about the above-mentioned through the modern communication means (e-mail, telephone, SMS). The mentioned decision can be posted on an official website of the SPA, in such case, the mentioned information shall be considered sent officially upon posting thereof on the website;

b) in case of submission of a complaint that does not follow the format prescribed under Appendix No 1 it shall inform the complainant about the above-mentioned using modern communication means (e-mail, telephone, SMS) and set forth the term for fixing the gap, not to be later than the following working day. If the complainant fails to fix the gap within the prescribed timeframe the secretariat of the Board will deem the complaint inadmissible, about which it will immediately inform the complainant according to the rule established under Sub-paragraph (a) of this Paragraph. In case the gap is identified the counting of the term of review of the dispute shall commence after the fixing of the gap from the instance it is deemed admissible;

c) in case the received complaint is deemed admissible it immediately takes relevant measures in order to suspend relevant procurement procedures through the Unified Electronic System of State Procurement (hereinafter – the System);

d) ensures organizing the sittings of the Board and invitation of the parties (complainant, respondent) and interested persons (if applicable) to the sitting of the Board;

3. At the sitting of the dispute review a member of the secretariat will brief the members of the Board about the substance of the case, the names of the attendees of the sitting and their authority;

4. As soon as the procurement related complaint is deemed admissible the members of the Board will be informed about the above-mentioned through modern communication means (e-mail, telephone, SMS) and will be informed about the possibility to acquaint themselves with the complaint and supporting documentation (if applicable).

Article 5. The Sitting of the Board

1. The Chairman leads the sitting of the Board.
2. The Board is authorized if at least three members are in attendance.
3. The Board reviews the dispute and takes a decision within ten calendar days from receiving a complaint. The Board is authorized to hold a preparatory meeting.
4. Based on the circumstances of a case a specialist, expert and/or an interpreter can be invited to the sitting of the board at the initiative of a party or the Board.
5. The Chairman of the Board is authorized to have the violator of order leave the sitting of the Board.
6. After hearing the information envisaged under Article 4(3) of these Rules a complainant or his/her authorized representative shall brief the Board about those circumstances and evidences on the basis of which he/she demands granting of the complaint.
7. After the presentation of a complainant a respondent or his/her authorized representative shall present to the Board his/her own position by referring to the evidences.
8. After the presentations of the complainant and the respondent the members of the Board will express their position with regard to the complaint, about the decision taken by the respondent and the circumstances and the evidences of the complainant related to the granting of the complaint.
9. The parties may pose questions to each other subject to the consent of the chairman of the sitting. A member of the Board is authorized to ask a question to a party at any time.
10. After hearing the positions of the parties a conference is held with the involvement of the members of the Board in order to take a decision about the opinions stated at the Board.
11. The sitting of the Board can be conducted by using such means of electronic communications that ensure the possibility of simultaneous audio and video connection of all participants of the sitting of the Board and sending of the documents on-line (video conference).

Article 6. The Rules of Activity of the Board

1. A complainant and a respondent, or an authorized representative thereof shall be informed about the time and place of holding a sitting of the Board using modern means of communication (e-mail, telephone, SMS). If the persons referred to in this Paragraph cannot be reached the dispute is reviewed without their participation.
2. The day of a sitting to review a complaint filed to the Board shall be assigned by the Chairman of

the Board, subject to the suggestion of the secretariat of the Board.

3. The sitting of the Board is held at the SPA (28, Pekini Str., Tbilisi). in case the sitting is held in accordance with Article 5(11) of the Rules, a member/members of the Board can take part in the sitting of the Board through a video conference.

4. The Board shall review a complaint at an open sitting, with the exception of the cases envisaged under the legislation of Georgia.

5. Every member of the Board assesses the complaint and filed evidences according to their moral certainty that must be based on a comprehensive, full and objective consideration of the dispute.

Article 7. A Decision of the Board

1. The Board is authorized:

- a) to grant a complaint fully or partially;
- b) refuse to grant a complaint.

2. If as a result of a detailed examination of the complaint and the related circumstances thereof by the Board the justness of the complaint is confirmed the Board shall be authorized to:

- a) indicate to the procuring entity about erroneous action thereof and require the conduction of the procurement procedures in compliance with the legislation;
- b) require a procuring entity to revise or cancel the taken decisions;
- c) bring up before relevant bodies envisaged under the legislation of Georgia the issue of responsibility of the participants of the procurement.

3. The following must be specified in the decision of the Board:

- a) date and place of adopting thereof, names of the members of the Board, of a complainant and a respondent, their authorized representatives and other persons involved in the case as well as the matter of the dispute;
- b) a circumstance and/or evidence determined by the Board on the basis of which any evidence was rejected or confirmed, as well as a relevant norm of a legal act thereof was guided by;
- c) the Board decision about granting the complaint in full or partially or the refusal to grant thereof;
- d) the timeframe and rule for appealing thereof.

4. The decision of the Board is taken by the majority vote of the members of the Board in attendance. In case the votes are distributed equally the vote of the Chairman of the Board is decisive. A member of the Board is not authorized to abstain from voting. A member of the Board that does not agree to the taken decision can formulate own differing opinion in writing, which shall be attached to the taken decision.

5. The decision of the Board is signed by all members in attendance at the sitting of the Board. In case envisaged under Article 5(11) of the Rules a member of the Board participating in a video conference is sent a decision by e-mail by the secretariat of the Board, which will reflect the position expressed by each member of the Board.

6. In case envisaged under Paragraph 5 of this Article a member of the Board participating in a video conference will confirm by e-mail that the decision reflects the position expressed thereof at the sitting of the Board that shall be equivalent to the signing of the decision thereof.

7. The decision of the Board is public and will be posted on the official website of the SPA upon taking thereof.

8. The parties will be authorized to appeal against the decision of the Board in court, according to the rule established under the legislation of Georgia.

Article 8. Final Provision

The entry of modifications and/or additions to the Rules and declaring thereof cancelled will be performed under the Order of the Chairman of the SPA.

Appendix No 1

A Complaint to the Dispute Resolution Board of the SPA	
Challenged Tender N	SPA Enter details
Name, last name/ name of the Complainant	Enter details
Personal/identification code	Enter details
Address	Enter details
Telephone	Enter details
Mobile Telephone	Enter details
E-mail	Enter details
Full name of a procuring entity , to which action a complaint relates	Enter details
Substance of the complaint	
Legal grounds of the Complaint	
The listing of the documentation attached to the Complaint, by indicating the number of pages	
Name and last name of the person lodging the Complaint	Enter details
Personal number of the person lodging the Complaint	Enter details
Date of filling out	Enter details

The Complaint to the Dispute Resolution Board of the SPA 28, Pekini Street, Tbilisi 0160, Georgia,

Tel: 38-51-59 www.procurement.gov.ge

A complaint that has been lodged without observing the requirements prescribed under the legislation shall be declared inadmissible and will not be subject to consideration.