

# Report on Monitoring of International Donors' Assistance for IDP Housing



**REPORT ON MONITORING OF INTERNATIONAL  
DONORS' ASSISTANCE  
FOR IDP HOUSING**

Tbilisi  
2010

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## EXECUTIVE SUMMARY

The Georgian Young Lawyer's Association (GYLA) monitored the expenditure of EUR 66.5 million donated by the European Commission (EC) and the Credit Reconstruction Bank (KfW) to assist with housing IDPs. These funds were disbursed by three different types of agencies utilizing two different types of procurement. The Municipal Development Fund (MDF), the Ministry of Resettlement and Accommodation (MRA) and 16 municipal agencies received funds to construct new housing or refurbish old collective housing for IDPs. GYLA was able to review 170 contracts signed with 54 companies. Because several municipalities provided incomplete information or none at all, GYLA could not identify how many projects were initiated in all. Of the 85 contracts distributed through public tendered procurement, in which is supposed to be open to the public and entirely merit-based, two companies won nearly half of the contracts and received almost half the available funds. These two companies, New Energy Ltd and Block Georgia Ltd, donated extensively to the National Democratic Movement political party in 2007 and 2008.

GYLA found every project it reviewed was marred by some violation of the Georgian Law of Public Procurement. The legal violations of the implementing agencies the procurement process ranged from relatively minor problems, such as vague contract terms that allowed the contractors excessive flexibility in implementation, to the egregious, such as amending the contract to increase its value by 294 percent. Some were administrative errors; for example, the MDF did not conduct due diligence investigations to verify that a property in Mtskheta was publicly owned prior to contracting for a cost estimate to rehabilitate the property. Often, the information provided by the procuring agency about the work to be done was incomplete, vague or not provided at all, as was the case of an apartment building in Kutaisi.

Most contracts were amended after signature, in violation of the Law of Public Procurement. According to the law, amendments that increase the amount of the contract or extend the time period of implementation are forbidden except in cases of unforeseen circumstances. The amendments likely have two causes: poor quality tenders on the part of the procuring agencies and unrealistically low bids from the contractors. The companies often underestimated their bids because they knew contracts were only awarded to the lowest bidder.

Most of the construction and rehabilitation works completed was of poor quality, incomplete or in gross violation of the terms of the contract. Because the implementing agencies did not oversee the work of the contractors, the resulting work suffered from leaky roofs, cracked walls and deformed flooring. The most egregious example of poor craftsmanship occurred in the municipality of Gori, where the clinic that Arch-studio Peristal Ltd was contracted to rehabilitate has raw sewage leaking from the ceiling and accumulating in hallways. In an example of incomplete construction, 563 houses constructed in the Gori, Kaspi and Karelis municipalities do not include a cattle shed as required by contract. The failure to construct the sheds was never explained to the procuring agency, meaning GEL 343,000 was expended without result.

It was not only the companies that produced poor quality products. The MDF commissioned an engineering and geological company, JSC Sakkalakmshenproekti, to evaluate the land upon which construction would take place. Although the company provided extensive recommendations on how to prevent flooding, such as cleaning out drainage trenches or building new ones, the MDF did nothing.

### **GYLA monitoring activities**

All implementing agencies did not fully respect GYLA's requests for information, despite being legally obligated to do so. Often the agencies provided incomplete information or used dilatory tactics to impede GYLA's fact-finding efforts. While most agencies complied with the requests for information once administrative complaints had been filed, Kaspi still has not provided information on the GEL 100,000 it received, despite receiving a court order to do so. The Senaki municipality told GYLA that the requested documents were no longer in its possession as the State Prosecutor's office had taken them to investigate allegations of criminal wrongdoing. GYLA was unable to report on how Senaki spent the GEL 1.1 million it received. The most uncooperative agency was the MRA. It failed to respond to any of the requests for information that GYLA placed with the agency, even after the court ordered it to comply. As of the writing of this report, GYLA had received no official information about how the MRA spent the GEL 2 million that was allocated to it from the state budget.

### **Conclusion**

The combination of the legal violations during the procurement process and poor oversight once the contracts were awarded resulted in poor quality housing being provided to the IDPs. GYLA has shared this report with the Chamber of Control; the Prosecutor's Office and looks forward to their response.

## I. INTRODUCTION/SCOPE OF STUDY

Following the 2008 August military actions the international community took a decision on providing assistance to Georgia. To this end, the International Donors' Conference was held in Brussels, the capital of Belgium, on 22 October 2008, which resulted in pledging USD 4.55 billion in international aid for Georgia.

In 2008 the Transparent Foreign Aid to Georgia Coalition was set up to ensure a proper monitoring of the spending of these sums by the Government of Georgia. The members of the Coalition are: Open Society Georgia Foundation Green Alternative, Transparency International Georgia, Economic Policy and Research Centre, Eurasia Partnership Foundation, Civitas Georgica and the Georgian Young Lawyers' Association (GYLA).

Within the scope of this Coalition and with the financial assistance from Open Society Georgia Foundation, GYLA has already produced three reports on the issues concerning the international assistance and the expenditure of this aid<sup>1</sup>. This is the fourth report. This study focuses on legal monitoring of the construction of residential houses for the people who were displaced as a result of the August 2008 military actions.

This study involved the examination of the legal documentation related to the construction works that were carried out by the state through local self-governments, legal entity of public law Municipal Development Fund (MDF) and the Ministry of Refugees and Accommodation. The works were funded with state budget allocations as well as disbursements to Georgia received as a result of the Brussels International Donors' Conference of 22 October 2008. This study deals with the procurements of construction/rehabilitation works for IDP houses conducted through direct contracting and competitive bidding.

## II. AIM AND METHODOLOGY OF MONITORING

The monitoring was aimed at examining the compliance of procurements of construction works for IDP houses with the law, i.e. to find out whether the procurements were conducted as designed and in compliance with all the procedures; to identify any violations in the process and evaluate the efficiency of the spending against the obtained results.

To this end, we asked the procuring entities - the Ministry of Refugees and Accommodation of Georgia, Municipal Development Fund of Georgia, local administrative bodies of Gori, Tetritskaro, Marneuli, Bolnisi, Gardabani, Khashuri, Kareli Sagarejo, Dusheti, Telavi, Lagodekhi, Kaspi, Oni, Senaki, Mtskheta municipalities and the Kutaisi Mayor's office – to provide procurements-related documentation. The analysis of the obtained documentation revealed that the documentation was incomplete in many cases and we sent additional requests to the same entities as well as Chief Prosecutor's Office. For additional information we applied to the State Agency for Procurements and the Chamber of Control of Georgia. The Ministry of Finance of Georgia was approached for the information related to international agreements.

The study involved the analysis of the obtained materials, namely, we scrutinized the documents (procurement agreements, amendments and addenda thereto, cost estimates, engineering design documentation, defects or inspections acts, delivery-acceptance acts, documentation certifying the transfer of amounts), identified common features of these documents, and studied the compliance of the documents with the Georgian legislation through comparing normative and factual realities.

As violations had been identified, final recommendations were drawn up. The implementation of these recommendations will help eliminate detected violations and improve shortcomings.

### **Problems/obstacles in the implementation of monitoring**

An initial stage of the monitoring was marked with difficulties, primarily with access to information. Although the data requested by GYLA was public information which must be issued within a maximum of 10-day period as per the law, several procuring entities either failed to provide procurement-related legal documentation or provided incomplete information.

For example, the person responsible for the issuance of public information at the municipality of the self governing city of Kutaisi failed to respond to an application submitted by GYLA on 10 September 2009. Therefore, an administrative complaint was filed on 8 October 2009 demanding that action be taken by that person. Only after the submission of this complaint, the requested information was provided in full.

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<sup>1</sup> Recording, Use and Control of International Assistance in Georgia, Tbilisi, 2009; Analysis of International Agreements Concluded within the Framework of International Donors' Conference, Tbilisi, 2009; Monitoring of Vaziani-Telavi-Gombori Road Rehabilitation Process (Initial Report) Tbilisi 2009.

In response to an application in which we requested the procurement documentation and other related information, the head of the Karelis municipality, on 6 October 2009, supplied us with the copies of only three pages. On 8 October 2009 we filed an administrative complaint demanding the complete information. In response to the administrative complaint we were informed that the municipality already provided the materials which we requested with the letter dated 6 October. GYLA explained to the municipality that the provided information lacked some of requested documentation and demanded again that the administrative complaint be reviewed. After this repeated demand GYLA received the materials.

On 10 September 2009, GYLA asked a person responsible for the issuance of public information at the Kaspi municipality to provide information on the measures implemented through 100 000 Lari allocated to the Kaspi municipality under the Georgian Government's ordinance #563. This information was not provided and therefore we filed an administrative complaint on 8 October 2009. GYLA's complaint was left without an adequate reaction. On 19 February 2010 the court took a decision on the compliance with the claim. It is now in the process of enforcement.

On 10 and 16 September 2009, GYLA submitted four applications to a person responsible for the issuance of public information at the Oni municipality, requesting the information on the measures implemented with the amounts allocated to the Oni municipality under the Georgian Government's ordinances #563 and #225. The applications were left without response and GYLA filed an administrative complaint on 8 October 2009. GYLA's complaint was not reviewed. After filing a claim at courts, the Oni municipality issued the information requested in only one application. A court hearing on the case is under way.

In response to GYLA's application #g-04/38(15)-04 of 27 February 2009, the Senaki municipality's administrative body informed us that 53 buildings had been rehabilitated. However, a certain part of the documentation was withdrawn for the scrutiny by the Samegrelo-Zemo Svaneti prosecutor's office. We repeated our request for the documents during the study, but they were not provided on the same grounds. Three agreements, however, were supplied:

1. The agreement #91, dated 23 September 2008, entered into with the JSC Khuro on the development of an engineering design for the rehabilitation of some parts of Akaki Khoravi state theater, with the total value of 8 000 Lari;
2. The agreement #92, dated 23 September 2008, entered into with the Zugdidekspertiza Ltd on drawing up a cost estimate for the rehabilitation of residential houses damaged as a result of air strikes, with the total value of 3 500 Lari;
3. The agreement #101, dated 20 September 2008, entered into with the sole entrepreneur Jamlet Janashia on the implementation of the first priority rehabilitation works of buildings damaged as a result of military actions, with the total value of 26 000 Lari.

The provided documents do not provide a full picture to judge the legality and efficiency of the spending of amounts allocated under the ordinance #563 of 8 September 2008.

The most closed entity which failed to provide any information was the Ministry of Refugees and Accommodation. In an application of 27 February 2009, GYLA requested the documentation on the expenditure of the amounts allocated under the Georgian Government's ordinance #603, dated 22 September 2008, for the repair and rehabilitation of the facilities for temporary housing of refugees. In the letter #06-06/1985 provided by the ministry, we were informed only about the **number** of those facilities which had been repaired and rehabilitated; the letter, however, was not enclosed with the copies of relevant documents. On 22 June 2009, we again submitted the application #g-04/109-09 to the person responsible for the issuance of the information at the ministry, asking for the copies of the documents on the works implemented with the amounts allocated under the above mentioned ordinance. The application was left without any response.

This inactivity was protested against by an administrative complaint on 23 July 2009; however no reaction followed.

With the application #g-04/185 of 16 September 2009, we asked the information on the transfer of amounts to the Marneuli municipality from the funds to the Ministry of Refugees and Accommodation allocated on the basis of the Georgian Government's ordinance #558 dated 3 September 2008. An administrative complaint against the inactivity was filed on 8 October 2009. After the submission of the complaint, on 23 October 2009, we received a letter #06-06/5058 dated 22 October 2009, which was the response to the application #g-04/185 dated 29 September 2009. Although the letter contained the information which we requested in the application and administrative complaint, it was not enclosed with the copies of documents.

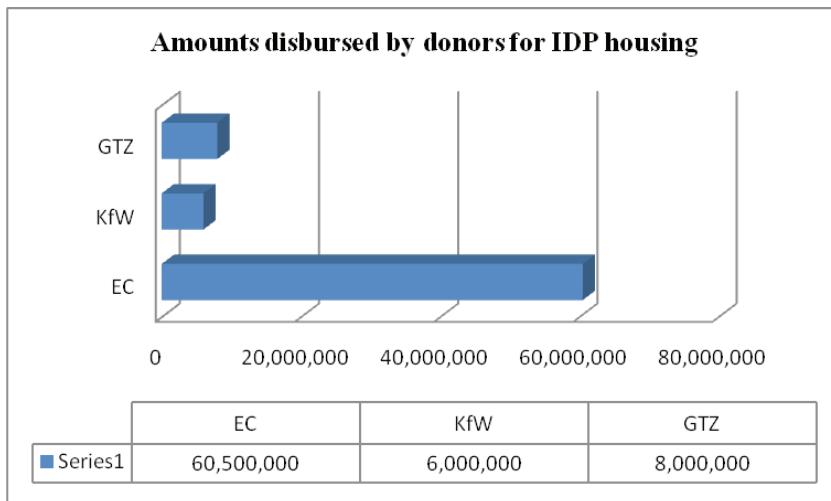
On 3 November 2009 GYLA sent the application #g05/09-09 regarding the clarification of the administrative complaint, in which we again requested the copies of sought documents. This application was also left without any response by the public entity. A dispute on the issuance of information is to be heard in courts.

### III. ALLOCATIONS FOR IDP HOUSING

#### 1. Terms of international agreements and allocated means

The donors' conference of 22 October 2008 in Brussels resulted in a substantial international aid for Georgia, amounting to USD 4,55 billion. Part of this amount was directed towards the assistance to displaced people. The aid envisaged, inter alia, the provision of housing to refugees. This was the primary aim of grant agreements with the European Community, GTZ, KfW and the Republic of Turkey.

#### Amounts disbursed by donors for IDP housing



#### European Community grants

To construct residential houses for internally displaced persons (IDPs) Government of Georgia entered into two financing agreements with the European Community:

- 1) Support to Georgia IDPs Action Plan: 2008 Part I;
- 2) Support to Georgia IDPs Action Plan: 2008 Part II.

We will provide a brief overview of each of these agreements.

#### ***Support to Georgia IDPs Action Plan: 2008 Part I***

This financing agreement is designed to assist only those persons who were forcefully displaced due to the Russia-Georgia conflict of August 2008, unlike the second agreement with the European community which involves "earlier" refugees along with the "new" ones.

Moreover, the aim of the financing agreement is "Full implementation of the Municipal Development Fund 2008 State Budget allocation directed to the construction of new houses...infrastructure rehabilitation/construction and related design (water/waste water and roads)."

This financing agreement entered into force on 5 December 2008. The total value of the contract is 10 million Euro and excludes the financing of taxes. Therefore, the amount allocated for Georgia comprises Euro 9.8 million whereas Euro 0.2 million is the amount to be spent by the donor itself within the scope of technical assistance.

According to the information provided by the Ministry of Finance, the first disbursement request was sent to the European Commission on 5 December 2008, i.e. on the day the Georgian side signed the agreement and the agreement entered into force. The amount considered under the agreement was transferred onto the foreign currency account of the Ministry of Finance Treasury Service and was converted into the national currency on 31 December 2008. An official exchange rate of Euro on that day was 2.3648 Lari. The same day the equivalent amount in Lari (23,174,03.52 Lari) was placed on the treasury service single account.

### ***Support to Georgia IDPs Action Plan: 2008 Part II***

This financing agreement, in contrast to the preceding one, is equally directed towards IDPs since the early 1990s and IDPs resulting from the open conflict between Russia and Georgia since August 2008.

The agreement is in force since 1 June 2009. According to article 2.1 of special conditions of the Agreement, the total cost of the program is estimated at 51,5 million Euro, of which 50,7 million is the budget support component, i.e. the amount allocated for the Government of Georgia, while the remaining 0,8 million Euro is intended for the technical assistance and should be spent by the donor itself. The sum defined in the Agreement shall not be used for financing taxes. The last paragraph of article 2, Annex I of the Agreement (modalities for the disbursement of funds) envisages the disbursement of the amount in three installments.

According to the information provided by the Finance Ministry, the request for the disbursement of the first installment – 12,1 million Euros, was sent on 4 June 2009 (within three days of the date the Georgian side signed the agreement and the agreement entered into force). This amount was transferred onto the foreign currency account of the Ministry of Finance Treasury Service on 16 July 2009 and was converted into the national currency on 17 July 2009 (with the official Euro/Lari exchange rate at 2.3528). The same day the equivalent amount in Lari (28,468,644.72 Lari) was placed on the treasury service single account.

The second installment - 26,957,714.00 Euro was transferred onto the foreign currency account of the Ministry of Finance Treasury Service on 24 December 2009, thereafter converted into the national currency and 65,224,189.02 Lari placed on the treasury service single account. The release of the third installment is scheduled in Quarter III, 2010.

	Date of transfer	Amount in Lari
First tranche	16.07.09	28,468,644.72
Second tranche	24.12.09	65,224,189.02
<b>Total</b>		<b>93,692,833.74</b>

### **GTZ grant**

The agreement between Government of Georgia and Government of Federal Republic of Germany on the implementation of the project, Construction of Some 300 Stone Houses for People Displaced as Result of Events in Georgia in August 2008, was executed through the exchange of notes between the heads of government on 18 December 2008. GTZ was charged with the implementation of the project.

The project covers new refugees and is aimed at facilitating the integration of those people who cannot return to their homes after the August 2008 events. The Agreement defines the responsibilities of German and Georgian sides as follows:

The Government of the Federal Republic of Germany will allocate personnel and materials and also, on certain occasions, a financial assistance of a maximum Euro 8.000.000.

The Georgian Government will allocate free of charge a site for the construction of some 300 stone houses in the city of Gori. It will also ensure the development of associated infrastructure by arranging water supply and sewerage systems, electricity and gas supply network and roads. The Government of Georgia, upon the instruction of the Government of the Federal Republic of Germany, shall exempt all the material purchased for the implementation of the project from license, airport, seaport, import, export and other official indirect taxes, customs duties and charges as well as warehousing fees; it shall ensure unimpeded customs clearance of materials. GTZ shall not pay official taxes, customs duties and fees related to the implementation of the project.

After the completion of the construction, the houses shall be transferred into the ownership of the Government of Georgia. The Government of Georgia assumes the responsibility to make available these houses free of charge to those persons who were displaced due to the 2008 August military actions and cannot return to their homes in the foreseeable future. Future residents of these houses shall be selected by a special joint commission. On the completion of a year of moving into these houses, the Government of Georgia shall transfer them into the ownership of the residents for a token price of 1 Lari.

### KfW Grant

The financing agreement between the Credit Reconstruction Bank (KfW) and Georgia was executed on 19 December 2008. The Agreement envisages the rehabilitation of housing for IDPs in West Georgia and is fully directed towards "earlier" refugees. Under the Agreement the German side assumed the liability of disbursing 6 000 000 Euro.

The Government of Georgia assumed the obligation of paying all the taxes and official charges, including the costs of bank transfers and currency conversion. The project implementing entity is the Municipal Development Fund. It was also charged with awarding the contracts on procurement of goods and services through international competitive bidding.

A two-room apartment per family is a targeted standard in this rehabilitation project. However, some changes may be made for technical or/and social purposes. For example, three-room apartments may be provided to larger families or one-room apartments to single people.

### Turkey

On 11 November 2008, the protocol was signed by the Government of Georgia and the Government of the Republic of Turkey on the Construction of 100 Permanent Houses for Displaced People by the Turkish International Cooperation and Development Agency (TICA).

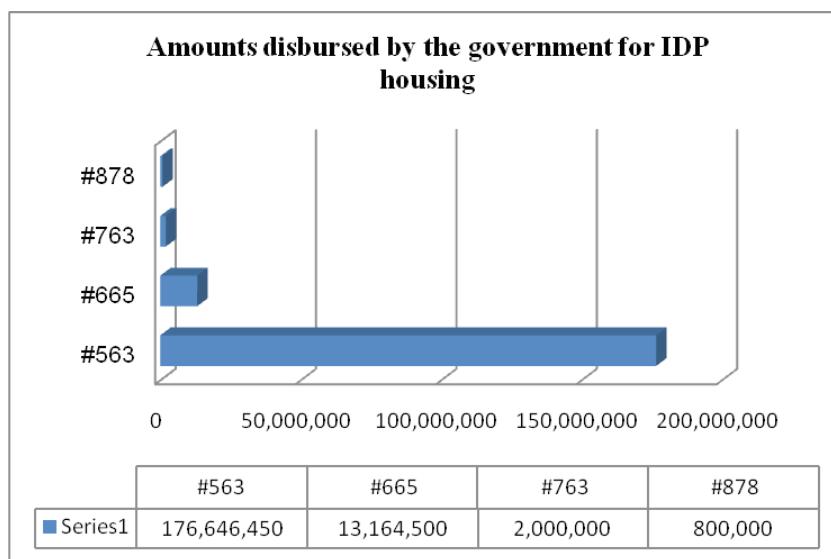
The above mentioned protocol was ratified by the parliament of Georgia on 16 December 2008. The protocol defines obligations of the government of Georgia as well as the government of Turkey.

The obligations of the Georgian side include: allocation of a site for the construction of houses, acquisition of all the permits (including the construction permit) and documents, registration, arrangement of all legal issues concerning the transfer of houses to families and the fulfillment of the related procedures, the acquisition of all the permits and visa for seconded workers and personnel, exemption of all the materials and construction equipment delivered from Turkey from customs duties and any other taxes and charges, the conduct of geological researches and preparation of a general plan of resettlement, the arrangement of road and electricity lines to the building site prior to the commencement of construction works, installation of the transformer and drilling of artesian well for potable water.

Turkey will ensure the construction of 64.5 m<sup>2</sup> one-story permanent houses, the development of infrastructure (gas, water, water reservoir, electricity, irrigation channels) to the houses and arrangement of water and electricity communications networks in the houses.

### 2. Allocations by the government of Georgia

In 2008-2009, the Government of Georgia adopted eight ordinances on the disbursement of amounts to the Ministry of Refugees and Accommodation, the legal entity of public law MDF and various municipalities, for the construction of houses for IDPs.



The Government of Georgia's ordinance #503, dated 30 July 2008, on the Allocations from State Budget to the Autonomous Republic of Ajara and Local Self-government Bodies, was amended nine times after the August military actions. The amendments served the aim of better reflecting the reality after the August war and clarifying the amounts allocated to each municipality for the elimination of consequences of the war. According to the final edition of the ordinance, the total of 3 625 000 Lari was disbursed to administrative bodies of the Gori, Kaspi and Kareli municipalities from **the fund for projects to be implemented in the regions of Georgia**. The act issued by the government lists the projects to be implemented by each municipality. It includes the construction and rehabilitation of the buildings damaged as a result of military actions, although it is not clear how much of these amounts should be directly spent for this project.

The administrative body of Gori municipality was allocated 2 695 000 Lari for the implementation of various projects, such as:

- a) rehabilitation of drinking water supply systems in the municipality;
- b) street lights;
- c) **construction and rehabilitation of the buildings damaged as a result of military actions;**
- d) rehabilitation of a public school in the village of Karaleti;
- e) delivery of flour to the former population of the villages in the buffer zone.

The administrative body of Kaspi municipality was allocated 330 000 Lari for the implementation of the following projects:

1. rehabilitation of local roads and arrangement of flow water channels;
2. rehabilitation of a pedestrian bridge connecting the villages of Akhalkalaki and Tedzmiskhevi;
3. **construction and rehabilitation of the buildings damaged as a result of military actions.**

The administrative body of Kareli municipality was allocated 600 000 Lari for the implementation of the following projects:

- a) rehabilitation of sewerage systems in the municipality;
- b) arrangement of a headwork of potable water in the villages of Leteti and Abisi;
- c) rehabilitation of roads in the municipality;
- d) **construction and rehabilitation of the buildings damaged as a result of military actions.**

By the Government of Georgia's ordinance #563, dated 8 September 2008, for ensuring living conditions for the victims of military actions and rehabilitation of damaged buildings, the local self-government bodies and the Municipal Development Fund, were allocated 176 646 450 Lari from the **fund for projects to be implemented in the regions of Georgia**, including:

#	Regions	Allocated amounts in Lari
1.	Tetritskaro	5 406 000
2.	Marneuli	3 660 750
3.	Gardabani	1 683 000
4.	Bolnisi	325 000
5.	Khashuri	2 602 700
6.	Kareli	5 859 400
7.	Oni	1 541 000
8.	Gori	22 881 000
9.	Mtskheta	96 775 000
10.	Dusheti	1 752 500
11.	Senaki	750 000
12.	Kaspi	100 000
13.	Sagarejo	362 000

14.	Telavi	489 400
15.	Lagodekhi	623 200
16.	Kutaisi	3 000 000

According to the initial version of the ordinance, the allocation stood at 13 900 000 Lari. In total 11 amendments were made to the ordinance with each amendment increasing the allocated amount and in the end reaching 176 646 450 Lari.

By the Government of Georgia's (GoG) ordinance #665, dated 10 October 2008, for the rehabilitation of buildings damaged as a result of military actions and the issuance of compensation to people suffered from these actions, administrative bodies of municipalities were allocated 13 164 500 Lari from the **reserve fund of the government**, including:

- a) the administrative body of Kareli municipality - 3 633 500 Lari;
- b) the administrative body of Gori municipality – 9 181 000 Lari;
- c) the administrative body of Senaki municipality – 350 000 Lari.

It should be noted that the initial version of the ordinance envisaged the allocation of 3 000 000 Lari. It was amended four times in total finally reaching the amount of 13 164 500 Lari.

The ordinance #603 was amended by the GoG ordinance #763 of 19 November 2008 and the Ministry of Refugees and Accommodation was allocated 2 000 000 Lari from the **reserve fund of the government** for the repair and rehabilitation of the facilities in compact IDP settlements, being in extremely difficult conditions, and facilities for temporary resettlement of people having suffered from the military actions in August 2008.

Under the GoG ordinance #878 of 17 December 2008, the **reserve fund of the government** of Georgia allocated 800 000 Lari to the administrative body of Gori municipality to ensure living conditions to victims of the military actions and rehabilitate damaged buildings.

Under the GoG ordinance #204 of 19 March 2009, the **fund for implementation of projects in the regions of Georgia** allocated 1 900 000 Lari to Gori municipality for the rehabilitation of apartments damaged as a result of the military actions. The amendment of 24 July 2009 to this ordinance increased this amount to 2 200 000 Lari.

By the GoG ordinance #206 of 19 March 2009, the **reserve fund of the government** of Georgia allocated 376 000 Lari to Gori municipality for the issuance of compensation to those 15 families whose houses were damaged so badly due to the military actions that could not be rehabilitated.

By the GoG ordinance #225 of 24 March 2009, the **reserve fund of the government** of Georgia initially allocated 100 000 Lari to Oni municipality for the issuance of compensation of damages incurred by the population as a result of the military actions and financing of the repair and rehabilitation of residential buildings. With the amendment of 9 December the same year, this amount decreased to 67 200 Lari.

As it can be seen, according to ordinances of the government, amounts were disbursed from two budget sources - the fund for implementation of projects in the regions of Georgia and the reserve fund of the government of Georgia. The amount disbursed from the fund for implementation of projects in the regions of Georgia comprised 182 471 450 Lari while that from the reserve fund of the government of Georgia 16 407 700 Lari, making up 198 879 150 Lari in total.

On 11 July 2009, the Law of Georgia on 2009 State Budget of Georgia was amended to put Measures to be Implemented by the Municipal Development Fund for Eliminating Damages Caused by Military Actions in a separate line, under the code 23 20. This line shows 40,661.4 thousand Lari as an actual figure for 2008, and zero for the 2009 target.

### 3. Correlation of financial donor assistance and budget funds

#### Incorporation of grants in the budget

To study the incorporation of the amounts in the state budget, granted by the donors for IDP housing, we scrutinized the budget laws for the years 2008, 2009 and 2010.

It showed that the first amendment to the law of Georgia on 2008 State Budget of Georgia was introduced at the end of 2008, namely, on 23 December. Article 4 of this law (Grants of the State Budget Georgia), the "Plan

for 2008" line showed the EU grant - Support to Georgia IDPs Action Plan: 2008 Part I – in the amount of 21 021 000 Lari. This amount was copied unaltered from the initial wording of the law on 2008 State Budget of Georgia<sup>2</sup> into the line of 2008 actual figure. Thereafter, by the amendment made on 11 July 2009, the amount increased up to 23 174 800 Lari

		December 30, 2008	July 11, 2009	December 4, 2009
Donor	Grant	2008 year - actual	2008 year - actual	2008 year - actual
EU	Support to Georgia IDPs Action Plan: 2008 Part I	21 021 000	23 174 800	23 174 800

\* Amendments to the law of Georgia on 2008 State Budget of Georgia

The Budget Law of Georgia on 2009 also contained the second EU grant (Support to Georgia IDPs Action Plan: 2008 Part II) as well as the grants of GTZ (Construction of IDP Houses in Gori) and KfW (Rehabilitation of IDP Housing in West Georgia). It is noteworthy that the amount shown in the line of grants did not stay the same throughout the year and changed along with the amendments to the law on the annual budget.

		December 30, 2008	July 11, 2009	December 4, 2009
Donor	Grant	2009 year - actual	2009 year - actual	2009 year - actual
EU	Support to Georgia IDPs Action Plan: 2008 Part II	117 634 000	117 634 100	96 199 300
GTZ	Construction of IDP Houses in Gori	14 300 000	14 300 000	15 300 000
KfW	Rehabilitation of IDP Housing in West Georgia	4 200 000	11 995 400	122 200

The grants for ensuring the IDP housing was reflected in the law of Georgia on 2010 State Budget of Georgia as follows:

Donor	Grant	2008 actual	2009 estimate	2010 estimate
EU	Support to Georgia IDPs Action Plan: 2008 Part I	23 174 800		
EU	Support to Georgia IDPs Action Plan: 2008 Part II		117 634 100	25 000 000
GTZ	Construction of IDP Houses in Gori		14 300 000	
KfW	Rehabilitation of IDP Housing in West Georgia		11 995 400	1 804 600

#### **Correlation between budget allocations to various entities and amounts envisaged by the international aid**

By discussing the correlation between the budget allocations to various entities and the amounts envisaged by international aid, we aim to review a possibility of finding equality between them. We therefore cannot consider all the grants but only targeted or direct budget assistance which Georgia received from the EU and KfW. The reason of such approach is that all the other donors - GTZ or the Republic of Turkey – carried out the procurement and implemented the contracts with the grants themselves. The Government of Georgia obtained the result so that it was not involved in the implementation of the programs.

The sum of amounts allocated by the GoG is 198 879 150 Lari and the sum of amounts allocated by the EU and KfW comprises 68 500 000 (60 500 000 + 8 000 000) Euro. Taking into account the modalities reflected in the budget, the sum of grant proceeds that have been already spent and are envisaged in the 2010 budget

<sup>2</sup> It was approved by the parliament on 30 December 2008.

plan totals 179 608 900 Lari (68 500 000 Euro). These two amounts will never equal each other as the international agreements on ensuring IDP housing do not finance taxes and other charges. The responsibility for these costs rests with the government of Georgia. In addition, 105 000 000 Lari was directly given to the MDF for construction and rehabilitation of IDP housing from the state budget (organizational code - 23 06 02 13) in 2009.

#### **IV. THE ANALYSIS OF PROCUREMENTS CARRIED OUT FOR IDP HOUSING**

##### **1. Analysis of public procurements carried out through competitive bidding by the Municipal Development Fund (revealed problems and violations)**

Rules for planning and preparing public procurements, defined in article 9 of the law of Georgia on Public Procurements, have been violated in almost all the cases of public procurement. This is proved by the changes to the tender documentation during procurements, which involved changes in qualifying requirements, removal of facilities from the procurement or changes in types/volumes of works, frequent amendments to agreements. In particular:

###### **1.1. Problem - inadequate study of procurement facilities**

**Example 1. Tender Package No: SB/IDP/CW/25-2009.** (*Repairs to the IDP Housing in Mtskheta Town and Mukhrani, Saguramo and Tserovani Villages in Mtskheta District, namely: Repairs to the former holiday camp buildings No1 and 2 in Mtskheta Town, two-storied house in Mukhrani Village, five-storied house in Saguramo Village and two-storied house in Tserovani Village*).

With the letter of 26 March 2009, the head of local administration of Mtskheta municipality requested the termination of the repairs to the two-storied house in the Mukhrani village because the building had been privatized by the Georgian Tradition Ltd through direct sale "on the basis of concrete selection." It is noteworthy that by the 26<sup>th</sup> of March, the engineering design and cost-estimate documentation had already been purchased for this facility, the tender was announced and relevant contract executed, although the facility was privatized under the ordinance of President of Georgia, dated 19 November 2008. It means that the MDF carried out a number of procurement preparation measures and incurred related costs for a building that was privately owned.

**Example 2. Tender Package No: SB/IDP/CW/34-2009.** (*Repairs to the IDP Housing in the Buildings of the Former Narcological Center, Nautical College and the Former Hotel for Sailors in the city of Batumi*)

On 20 August 2009 the Ministry of Health and Social Affairs of the Autonomous Republic of Ajara submitted the correspondence to the MDF, saying that first two floors of one of the three facilities to be repaired, namely, the Nautical College, were on the balance sheet of the Ministry of Defense and the ministry refused to transfer that space. It is noteworthy that the facility was selected for repairs, the rehabilitation project was prepared and the tender was announced but no one bothered to find out properly whom it belonged to.

###### **1.2. Problem – incorrectly defined qualification requirements, high administrative/artificial barriers, disregard of a competitive essence of tender, competition of companies only by prices of submitted tender proposals while ignoring other data.**

**1.2.1. Qualification requirements - certificate declaring the company had no tax liabilities – certificate on payments to the state budget.** The analysis of public procurements showed that at the first stage of procurements the tender documentation included a qualification requirement – **the absence of tax liabilities**, which, in our view, is an appropriate and well-worded qualifying criterion. An entrepreneurial subject who fails to properly administer and pay state taxes cannot be trusted and may prove to be an unreliable contracting party in the future. Moreover, the payment of state taxes is the priority requirement in public and private laws and its fulfillment is of primary significance. Hence, the failure by a competing company to meet it should be a barrier to the participation in a tender. This qualifying criterion was changed afterwards into the requirement for providing a **certificate declaring tax payments had been made**, which, given the aims of the above mentioned public procurements, is not a factual evidence that may provide some useful information or result. It is an additional document or paper which does not provide the complete and accurate tax status of the company. Moreover, in the worst case scenario it would be possible to evaluate companies by the amount of their tax liabilities and evaluate them in this way.

**Example 1. Tender Package No SB/IDP/CW/05-2009.** (*Lot 1. Repairs to the houses No 210; 198; 197; 196; 195; 85; 86; 202 of the military settlement in Senaki (the total area of 12 809 square meters); Lot 2. Repairs to the houses No 206; 205; 203; 201 of the military settlement in Senaki (the total area of 11 809 square meters); Lot 3. Repairs to the houses No 194; 193; 192; 190; 189; 184; 181; 188; 180 of the military settlement in Senaki (the total area of 9 839 square meters); Lot 4. Repairs to the houses No 200; 199; 204; 211; 117; 98; 99; 92; 116; 147 of the military settlement in Senaki (the total area of 11 274 square meters).*) A bidding company, Mshenebeli 80 Ltd., had a debt of 551 861 Lari to the state budget. If the qualifying criterion had been defined fully and properly, the unreliable company would have been disqualified in the procurement. But an improper definition of the qualifying criterion made it impossible to apply the exclusion mechanism to the unreliable bidding company.

**1.2.2. Qualifying criterion - SB/IDP/CW/18-2009.** (*Repairs to the IDP Housing in the apartment house at 4 Danelia Str, in the kindergarten in the "EMU" factory area, hostel buildings No 1, 2 and 3 and camps in Maltakva area in Poti Town*). It is important that one of the grounds for the disqualification of Sani Ltd was the failure of the company to present a letter from the bank evidencing that the bidding company had the credit line of at least GEL 600,000 or, in case of winning the tender he bank would open such a line. Therefore, the bidding company that submitted the best tender proposal, **Sani Ltd (1 268 188 Lari) was disqualified and Dagma Ltd (1 400 165 Lari) became the winner.**

#### **1.2.3. Application of qualification requirement to bidding company and sub-contractor**

There were cases, when for the aim of the tender, the Tender Commission summed up qualification requirements of a bidding company and a contractor, which is absolutely unacceptable, or when the commission released a subcontractor from the obligation to meet qualifying criteria

**Example 1. Tender Package No SB/IDP/CW/06-2009.** (*Repairs to Houses No 1 and 2 in the IDP Settlement in Agara Village of Karel District and Cottages No 1-5 in Doglauri Village*). This tender announcement specified the rule according to which the qualification information submitted by a bidding company and a subcontractor would be summed up for the aims of the tender. Later, by amending the announcement the commission fully released subcontractors from qualifying requirements. According to paragraph 3, article 9 of the Ordinance #1, dated 3 January 2006, of Chairman of State Procurement Agency on the approval of regulation on the Rule for Implementing State Procurements, "Qualifying requirements shall also apply to subcontractors if they are expected to be involved at any stage of the implementation of state procurement." Regardless of a stage at which a contractor gets involved in the performance of works, the key contractor shall notify a purchaser about this and submit the documents and information certifying the qualification criteria of a subcontractor which are similar to those met by the contractor. Thus, a subcontractor cannot engage in the implementation unless it meets qualifying criteria individually, irrespective of any reservation clauses on sum-up and release.

#### **1.2.4. Qualification requirements regarding work experience**

The Tender Package No SB/IDP/CW/13-2009 requires the experience of 21 000 000 Lari worth completed works, the Tender Package No SB/IDP/CW/22-2009 requires the experience of 12 200 000 Lari worth completed works, No SB/IDP/CW/41-2009 requires the experience of 12 600 000 Lari worth completed works, etc. According to general rule for defining the amount of qualification requirement was that an estimated cost of works almost always comprised 10 percent of the minimal work experience. For example, if the cost of procurement was estimated at 1 500 000 Lari, the qualification requirement for the work experience stood at 15 000 000 Lari. A high qualification requirement often leads to unreasonable spending.

We believe that the above mentioned qualification requirement needs to be set as it is a universal mechanism for the protection from inexperienced and unreliable companies. But its disproportionate increase thereafter is unjustified from the point of view of fiscal policy of procurement and does not ensure a high degree of reliability. On the contrary, it creates a sort of artificial barrier to tender participation and may even prove unreasonable in fiscal terms. We think, that a qualifying requirement for work experience of, say, twice as much as (or even more) the estimated cost of procurement would have been defined and those with higher work experience, would be evaluated by a priority coefficient, thus making companies compete in this regard as well.

**One more qualification requirement regarding the work experience needs to be underlined. A qualifying requirement in a tender on two lots set at, say, 21 000 000 Lari of completed works, increases in proportion to the number of lots for a bidding company bidding for both lots. That means**

that in such a case a bidding company has to submit the experience worth of 42 000 000 Lari. However, this regulation does not apply to a bidding company participating in other tenders announced by the same purchaser on the same type and volume of works; in this case the amount of qualification requirement does not increase proportionally. This example proves again that a high qualification criterion for working experience and moreover, the increase of this criterion in proportion to lots in one tender is illogical and lacks any fiscal sense.

### **1.3. Problem – failure to observe forms and regulations for tender documentation and tender announcement, specified in the law.**

By analyzing about 60 tender documentations we have established that in the majority of cases the requirements set down in the law for the tender announcement and the submission of tender documentation are not observed. Paragraph 4, article 12 and paragraph 3, article 14 of the law of Georgia on Public Procurements, precisely define the information and requirements which shall be submitted in detail. In the reviewed cases, the tender announcements contain only part of those qualifying requirements which are given in the list of basic data of tender documentation. This is a gross violation of procedures for the conduct of bidding.

### **1.4. Problem – the completion of a tender with negative outcome – incorrect application of this mechanism**

The study of presented procurement materials revealed several types of problems:

#### **1.4.1. A tender report and an engineering design and cost-estimate documentation showed different estimated cost of works in the majority of cases.**

**Example 1. Tender Package No SB/IDP/CW/05-2009.** (*Lot 1. Repairs to the houses No 210; 198; 197; 196; 195; 85; 86; 202 of the military settlement in Senaki; Lot 2. Repairs to the houses No 206; 205; 203; 201 of the military settlement in Senaki; Lot 3. Repairs to the houses No 194; 193; 192; 190; 189; 184; 181; 188; 180 of the military settlement in Senaki; Lot 4. Repairs to the houses No 200; 199; 204; 211; 117; 98; 99; 92; 116; 147 of the military settlement in Senaki*). The estimated cost of procurement in the report on this tender was set incorrectly and differed from the estimated cost of works prepared by an engineering design organization:

**Lot 1 - 2 304 014 Lari (design documentation - 1 930 680 Lari);**

**Lot 2 - 2 103 809 Lari (design documentation - 1 510 384 Lari);**

**Lot 3 - 1 698 172 Lari (design documentation - 1 757 707 Lari);**

**Lot 4 - 1 839 496 Lari (design documentation - 1 598 142 Lari).**

The above indicated shows that a proper attention was not paid to the estimated cost of procurement. Therefore, when evaluating tender proposals, the Tender Commission often failed to take into account a purchaser's financial capacity to procure concrete works.

#### **1.4.2. An estimated cost of a tender is often given in a tender report as a total figure rather than a breakdown by each lot. This occurs in cases when a tender consists of several lots.**

**Example 1. Tender Package No SB/IDP/CW/46-2009** includes four lots. Estimated cost of procurement is 7 240 106 Lari, but estimated costs of separate lots is unknown.

#### **1.4.3. The completion of a tender with a negative outcome, when such a completion was inappropriate, and the completion of a tender without a negative outcome when a purchaser's financial capacity did not conform to a cost identified by the tender.**

**Example 1. Tender Package No SB/IDP/CW/11-2009** (*Repairs to the IDPs' housing in the Youth House and the former hotel "Komuna" Ltd in Kaspia Town*). It is important to note that in the commission's view "volume of works in Lot 2 was misinterpreted by companies because of a generalized nature of engineering design documentation (drawings included a building adjacent to the rehabilitation facility)." Therefore, the procurement on this lot, by the decision of the commission, was declared as completed with negative outcome.

Paragraph 2, article 21 of the Ordinance #1, dated 3 January 2006, of Chairman of State Procurement Agency on the approval of regulation on the Rule for Implementing State Procurements, specifies the circumstances when the commission decides on the completion of the tender with a negative outcome.

**"Tender is considered completed with negative outcome if:**

- a) None of submitted qualification data or/and tender proposals meets the requirement set by a procuring entity;**
- b) None of submitted bid prices conforms to the financial capacity of a procuring entity."**

The above listed circumstances do not include the one on which the commission based its decision. Thus the commission exceeded its discretion and with the decision on the tender ignored the requirements of the law. At the same time, it should be emphasized that the commission itself noticed, and emphasized, the improper preparation of public procurements.

**Example 2. Tender Package No SB/IDP/CW/40-2009** (*Repairs to the outside water supply and sewage systems of the IDP housing buildings in Telavi and Sagarejo Towns and Bakurtsikhe Village of Gurjaani District*). The winner in the tender was New-Energy Ltd with the contractual value of 238 172 Lari, which comprised 117 percent of the estimated cost. The important thing is that the estimated cost stood at 202 329 and accordingly, was reflected in the procurement plan and budget allotment. However, the price offered in the tender proposal was higher by 17 percent as compared to the financial capacity and target of a purchaser. According to article 21 of the Ordinance #1, dated 3 January 2006, of Chairman of State Procurement Agency on the approval of regulation on the Rule for Implementing State Procurements, the tender shall be completed with negative outcome if none of submitted bid prices conforms to the financial capacity of a procuring entity. In this particular case this requirement of a normative act was blatantly neglected by a purchaser.

## **1.5. Problems in multi-year procurements**

**1.5.1. Brief overview of legal basis** - Pursuant to article 9 of the Law of Georgia on Public Procurement, "a multi-year procurement, after it is approved by the Ministry of Finance or/and a finance body of a relevant self-government unit, shall be communicated to the Agency in the form of notification."

The implementation of the budget by a purchaser is one of the mechanisms of monitoring and supervision of public procurements. This means that at the end, the procurement can be assessed as successful when budget allocations are fully expended and set goals and objectives achieved. Therefore, it is decisive for one-year procurement that the programs that were drawn up and prepared in the previous year, are promptly and properly administered in the current year after they have been reflected in the budget. But if the program, given its goals and objectives, is a multi-year one, it may be planned in the budget as a multi-year procurement. Therefore, the procurement within one calendar year is a certain indicator and represents a guarantee for procuring entities that procurements are promptly and properly planned and implemented.

On 20 November 2009, the above mentioned article was amended, specifying that "Procurement shall not be regarded as multi-year procurement if it is carried out with the allotments from the budget of current year but delivered throughout the following budget year" This definition is unclear. The definition might mean that a multi-year procurement cannot be the case when budget allocations are spent in the current year in the form of advance payments and the supply, and accordingly the completion of the procurement, takes place in the following year. This is the only case which will not violate the budgetary order. Otherwise, if the payment is made in the following budget year irrespective of whether it was or was not envisaged in the budget of current year, it shall be still viewed as a multi-year procurement and shall be subject to the financial and economic requirements of the corresponding budget year. Given this, if public financial resources for one procurement are used during two budget years, it is necessary that a chief financial body of the country and chief curator of procurements be informed of such financial liabilities.

## **1.5.2. Failure to observe multi-year procurement regulations**

The implementation of public procurements for the rehabilitation of IDP houses was planned in the 2009 budget year. In order to carry out procurement stages in a prompt and flexible manner, the procurement of engineering design and cost-estimate documentation for construction works was conducted through direct contracting. Nevertheless, by amendments to the contract, a number of public procurements will be completed in the following 2010 budget year, instead of 2009. Thus, the procuring entity, the MDF, had the

obligation to agree the issue of modifying the procurement into a multi-year procurement with the Ministry of Finance and notify the State Procurement Agency about this. The provided materials, however, do not contain such information.

**Example 1. Tender Package No SB/IDP/CW/17-2009** (*Repairs to the former blood transfusion station at Tamar Mepe St. in Gori Town and the former dormitory of Gori University at Tskhinvali highway*). Engineering design and cost-estimate documentation was prepared in an unbelievable time-span through direct contracting. On 13 February 2009, the tender was announced. The contract with the winning company was signed on 16 March 2009. The deadline for the procurement/delivery was 23 August 2009. The contract was amended four times in the course of implementation and the deadline for the completion was set on 28 February 2010. Thus the procurement was modified into a multi-year procurement which required that the purchaser fulfill the requirements of Article 9 of the law of Georgia on Public Procurements. This requirement, however, was not fulfilled.

## 1.6. Engineering design and cost-estimate documentation in the public procurement of construction works. What type of information does design and cost-estimate documentation contain in public procurements reviewed by us and what is the function of this documentation?

**1.6.1. According to the laws of Georgia on Construction Activity and Public Procurements, the engineering design and cost-estimate documentation, first of all, define the specifications of the object of procurement (size, location, types of works to be performed, degree of existing damage and the result to be achieved).** Therefore, the accuracy and completeness of this documentation is essential for the achievement of public procurement goal and planned quality as well as the fulfillment of set objectives within the limits of budget allocations (the establishment of estimated cost of procurement). Given the above said, it is necessary for a purchaser to have a complete design and cost-estimate documentation before the announcement of the tender in order to ensure that limits of budget allocations are not violated and the procurement is properly fulfilled. The analysis of public procurements revealed a few cases when a purchaser either did not have design and cost-estimate documentation or had only incomplete and general data/information.

**Example 1. Tender Package No SB/IDP/CW/13-2009.** (*Lot 1. Reconstruction of ten-storied administrative building into 106 apartment building at Akhalgazrdoba Avenue in Kutaisi Town; Lot 2. Reconstruction of the kindergarten into 16 apartment houses at Belorussia St. in Kutaisi Town*). **The tender was announced on 10 February 2009. The issuance of tender documentation started on 11 February.** Clarified materials provided on 20 November 2009 revealed that on 20 January 2009, the MDF entered into contract with JSC Khuro on the purchase of the preparation of design and cost-estimate documentation for both lots (the documentation is used as tender material – architecture part, explanatory note, plans of apartments, electrical part, sewerage-water supply systems, specifications of doors and windows, preliminary cost estimate of the construction, photo material). The works envisaged in the contract was to be completed on **27 February 2009**. It is therefore unclear what was the tender documentation which the MDF issued on 11 February 2009, whereas the deadline for the preparation of the documents (architecture part, explanatory note, plans of apartments, electrical part, sewerage-water supply systems, specifications of doors and windows, preliminary cost estimate of the construction, photo material), which represent the integral part of the tender documentation, was 27 February 2009.

Even more, according to the contract of 20 January 2009, the implementing entity assumed an obligation to submit a report on the initial version of a detailed engineering design on 17 February and a report on the final version of engineering design, together with the tender materials, on 27 February. **On 31 March 2009, a delivery-acceptance act on the completion of the works was drawn up between the MDF and JSC Khuro, which means that the works were completed on the indicated date – 31 March 2009.** By that date, however, the tender was already completed, the winner identified and relevant contract awarded.

**1.6.2.** One key issue was very important in the reviewed public procurements, which caused controversies and claims among beneficiaries before the completion of the procurement. It concerned the contents of rehabilitation works, types of works to be carried out and standards and norms to be complied with. In this regard it should be noted that the MDF had a well prepared and precisely worded position which was later reflected and elaborated in the **Descriptions of Terms of Reference and Service**. The MDF conducted a procurement of relevant services for tender documentation, including engineering design and cost-estimate documentation, for each construction works. To achieve uniform standards and goals the MDF worked

out **common rules, norms and standards for the Description of Terms of Reference and Service**. Accordingly, engineering design and cost-estimate documentation for each concrete construction work was to be prepared in accordance with these goals and standards. But in the majority of cases this did not happen and created two types of problems:

1. The implementing design organizations failed to observe the requirement or,  
2. do the work properly or without flaws. After the delivery to and acceptance by the MDF of the work of the category as a flawless work, it became necessary to make frequent changes to it. As a result, all the contracts appeared to need changes and addenda, which affected the quality of works as well as the timeline for their completion and caused huge damage to the procurement regularities in fiscal terms. It should also be underlined that the MDF did not hold any of the engineering design companies to account for incomplete and poor implementation of the work. Neither did it impose on them the obligation to remedy the caused harm.
2. Another problem concern such cases when engineering design and cost-estimate documentation, though with some flaws, was more or less compliant with **common rules, norms and standards of Description of Terms of Reference and Service**, but due to insisting demands from beneficiaries and weak and unstable position of a purchaser, the uniform approach and standards were later entirely violated, which, first of all, harmed the interests of other circle of beneficiaries and caused unjustified financial costs.

**Example 1. Tender Package SB/IDP/CW/25-2009** (*Repairs to the IDP Housing in Mtskheta Town and Mukhrani, Saguramo and Tserovani Villages in Mtskheta District*). The agreement on the increase of the contract price was first signed on 1 June 2009, pushing up the tender price by 148 percent, or by 351 475 Lari, from 236 131 to 587 607 Lari. The ground for the increase indicated by representatives of the engineering design organization Arkservis Ltd, the MDF, the implementing entity, Pasat Ltd, and administrative body of Mtskheta municipality, was the increase in the volume after the clarification of construction works. On 10 August 2009 (although under the contract the works were to be completed by 10 June), another agreement was signed on the increase in the price of contract, raising the tender price by 37,4 percent. Accordingly, the cost of works increased by an additional 220 336 Lari and reached 807 843 Lari. With the third amendment to the contract on 2 October 2009, the cost increased by 123 013 Lari to 930 856 Lari. In total, the price of tender went up from the initial 236 131 Lari by 694 725 Lari, **which constituted 294 percent increase in the tender price**. It is important to note that the above mentioned changes included such additional works as the installation of suspended ceilings in toilets and bathrooms, tiling kitchen walls, tiling floors in balconies, etc. Thus the uniform standard and norms, which were followed in other procurements, were absolutely neglected.

## 1.7. Review and evaluation of tender proposals

There were rare cases of improper review of tender participant's proposals by the Tender Commission and their illegal disqualification. In particular, the commission failed to apply the mechanism for the elimination of inaccuracies in the tender proposals, envisaged by paragraph 3, article 15 of the law of Georgia on Public Procurements, which would have better ensured a reasonable expenditure of means.

**Example 1. Tender No SB/IDP/CW/31-2009** (*Rehabilitation of the former sea frontier post and the former sanitary-and epidemiological station in Kobuleti Town and the former technical school in Batumi Town*). The bidding company offering the best price, Service Ltd, was disqualified on the grounds that the submitted materials did not include the evidence on having the work experience worth of 9 million Lari. The tender proposal and enclosed documentation, however, reveal that the sum of construction works implemented by Service Ltd in 2006-2007-2008 years made up almost 21 million Lari. It is therefore absolutely unacceptable and illegal to disqualify the company having submitted the proposal which exceeded that of winning company by 33 000 Lari. As regards the confirmation of the above said by a profit tax declaration, it is worth noting that in accordance with the profit tax declaration for the years 2006 and 2007, the work experience of Service Ltd comprised  $2\ 877\ 920 + 6\ 251\ 385 = 9\ 129\ 305$ . That means that two year data alone fully met the requirement of 9 million worth work experience (qualifying experience). As regards the issue as to why Service Ltd failed to submit 2008 profit tax declaration, it should be noted that the tender packages were opened on 23 March 2009 whereas the deadline for the submission of the declarations for the year 2008 was 30 March 2009. Therefore, it is a valid argument that due to objective reasons the company did not have the profit tax declaration by that time.

On the other hand, the above bidding company's rival, VIP-Design Ltd, submitted the information on the construction works in the year 2008 alone with the cost of completed works standing at 3 440 000 Lari. It is noteworthy that according to subparagraph (i), paragraph 4, article 12 and subparagraph (m), paragraph 3, article 14 of the Law of Georgia on Public Procurement, at the commission's decision, none of the qualification requirements were subject to further clarification. Therefore the decision of the commission allowing the

rival to clarify qualification requirement within a set time and submit the profit tax declaration for 2008, was unacceptable. In this case, the commission did not also pay attention to the absence of relevant information. The declaration additionally submitted by VIP-Design Ltd showed that the turnover of the bidding company was in 2006 – 1 666 889 Lari; in 2007 – 2 014 474 Lari; in 2008 – 3 872 720 Lari. Thus, in total, according to submitted declarations, the company had the work experience of 7 54 083 Lari, which was short of qualifying criterion (9 million Lari). Accordingly, the company was to be disqualified, let alone the illegality of giving it the opportunity to provide additional documentation.

### **1.8. Changes to contracts on public procurement**

One should especially underlined the practice of frequent changes to the contracts, inadequate increase in cost, frequent changes in volumes, types of works and facilities. Frequently, requirements set forth in paragraph 5, article 21 of the law of Georgia on Public Procurement were ignored.

**1.8.1. Changes to the contracts on procurement are often made without any justification and substantiation.** Accordingly, one can rarely find the documentation in procurement materials, evidencing the grounds for changes. In the majority of cases volumes of one and the same type of works for one and the same facility, specified in tender documentation, were first, inadequately increased and then, decreased without any justification.

**Example 1. Tender No SB/IDP/CW/18-2009.** (*Repairs to the IDP Housing in the apartment house at 4 Danelia Str, in the kindergarten in the "EMU" factory area, hostel buildings No1, 2 and 3 and camps in Maltakva area in Poti Town*). The contract was amended four times over the period between its signing and the completion of works. The cost of works was increased by about 70 percent. This means that the cost of contract went up from 881 199 Lari to 1 206 322 Lari.

**A proof of unjustified changes is the following case:** the volume of type of work, installation of laminated flooring, in the high-rise apartment building at 4 Danelia Street in Poti town was specified in the tender documentation as 2124 square meters. Thereafter, by an amendment/addendum of 14 August 2009, the volume increased by 200 square meters to 2324 square meters. This increase was also confirmed by Defects Acts of unclear origin and date and signed by chief engineer of Architecture Office Ltd, which was later additionally provided by the MDF to us.

With the following amendment on 1 December 2009, the volume of the same type of work in the above mentioned building was decreased by 360,2 square meters to 1963,8 square meters. Thus, the volume of works in the building was in fact less than it was initially defined in the tender documentation. Thus, the increase and the factual circumstances indicated as grounds for the increase (in ambiguous Defects Acts) were totally unjustified and unsubstantiated. Even this small example and supplied documents make it clear that the changes were in most cases unjustified.

**Example 2.** Similar problem is seen in the **Tender No SB/IDP/CW/19-2009 for public procurement, where the cost of contract was corrected/increased on the basis of increased volumes of works; however, the volumes were then decreased again. Thus one cannot find any regularity and rationale of changes made to some contracts on public procurement.**

**1.8.2. To increase the cost of contract, volumes of works emerged additionally are prices at higher rates than the rates in the tender proposal.** The MDF made references to increased volume of works confirmed by representatives of engineering design organization, purchaser and in some cases, local municipality, as to basis for the increase of contract costs. At the same time, it also underlined that the increased volumes of works were priced in accordance with the unit prices specified in the cost estimate - an integral part of basic agreement. Despite such a claim of the purchaser, there were cases when increased volumes were priced at higher rates.

**Example 1. Tender Package No SB/IDP/CW/32-2009** (*Rehabilitation of the houses No6,7,9,10, 11, 12, 14 in Kopitnari Military Settlement in Kutaisi Town*). On the basis of additionally emerged need, which was confirmed by a design organization and an explanatory note of the MDF employee, on 12 August 2009, the cost of contract increased from 1 393 692 Lari by 911 428 Lari to 2 305 121 Lari. The need for such a change was also confirmed by a representative of the administrative body of Tskaltubo municipality. Hence, the agreement on the increase in the contract price was signed, thus pushing up the tender price by 65 percent ( $911428/1393692*100=65\%$ ). The basis for the amendment and the increase in cost was the works most of which represent the category of hidden works. (It is important to note that the type of work "removing

plaster from the wall" in the tender documentation cost-estimate was priced at 0,10 Lari per square meter, whereas after the increase in the volume, i.e. following the amendment, the price for the same space stood at 0,35 Lari).

**1.8.3. The cost of contracts are increased by adding such works (with corresponding pricing) as the dismantling of existing old doors, windows, floor and the like.** It is not expedient to set dismantling works as a separate type of works and to spend relevant financial resources. It should be noted that dismantling works is not a ground for amending a contract, envisaged by article 398 of the Civil Code. In particular, "after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong." In practice, dismantling works may be set as a separate type of works with related pricing, but the cost of dismantling works are often incorporated in the cost of corresponding assembling works. We believe that the quoting of dismantling works as a basis for the increase in the cost of contract is artificial and cannot be regarded as an objective ground.

**Example 1. Tender Package No SB/IDP/CW/17-2009** (*Repairs to the former blood transfusion station at Tamar Mepe St. in Gori Town and the former dormitory of Gori University at Tskhinvali highway*). The cost estimate of increased price includes a number of such new types of works which do not correspond to grounds for amending contracts, envisaged in article 398 of the Civil Code. The type of work "removal of wooden floor" in paragraph 6 of the cost estimate was not envisaged at all but the amendment added this type of work pricing it at 11 081 Lari. This is a totally unacceptable and unjustifiable/artificial increase of the contract cost.

#### **1.8.4. The high increase of the cost of works in contracts.**

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. Almost all the public procurements carried out by the MDF were later amended or complemented with addenda, and the cost increase of several contracts was disproportional.

**Example 1. Tender Package No SB/IDP/CW/15-2009** (*Lot 2. Repairs to IDP apartments in the three-storied building No3 of Sanatorium "Nakaduli", building "D" of Sanatorium Mziuri, Sanatorium "Nakaduli" and children's' dormitory in Surami Settlement*). The contract with the total value of 682 832 Lari was signed on 8 April 2009. On 24 June 2009 the contract was amended, decreasing the cost of contract by 474 595 Lari to 208 236 Lari. It is important to note that by this amendment a number of works were removed from the contract and the cost of remaining works increased. In particular:

1. Repair works of children's' dormitory in Sanatorium Mziuri in Surami Settlement – 91 705 Lari (**instead of 64 576 Lari**);
2. Repair works of building "D" of Sanatorium Mziuri – 0 Lari (**instead of 155 320 Lari**);
3. Repair works of the three-storied building No3 of Sanatorium "Nakaduli" - 84 766 Lari (**instead of 78 583 Lari**);
4. Repair works of a former building of Sanatorium "Surami" – 0 Lari (**instead of 461 717 Lari**).

By decreasing the types of works envisaged under the contract, the cost of contract increased by about 65 077 Lari. Actually, the cost of works in the tender was set at 143 159 Lari ( $64576+78583=143159$ ). Therefore, by comparing the increase with the actual tender price by types of works, we'll see that the cost of works increased by 45 percent ( $65077/143159*100=45\%$ ).

On 21 September 2009, another amendment was made to the contract, increasing the cost of contract from 208 236 Lari by 65 087 Lari to 273 324 Lari. Thus, in the end, the contract price **increased by 91 percent** ( $130164/143159*100=91\%$ ).

**Example 2.** There are also the cases when a bidding company offers a very low price, thus gaining the advantage over other and then, in the course of implementation of works, the offered price increases inadequately. **For example**, the winner in the **SB/IDP/CW/30-2009** was Block-Georgia Ltd, with the contract value of 1 117 246 Lari. Cost of works was estimated at 3 507 428 Lari. It is noteworthy that the winner's bid comprised 30 percent of the estimated cost, i.e. the bidding company offered the price which was less by 70 percent than the estimated cost of procurement. One may speculate that the bidding company decreased the cost of works by 70 percent in order to gain the advantage and thereafter, requested the increase of the tender proposal by 44 percent.

### **1.9. Poor administration and observance of terms for the completion of works.**

**Example 1. SB/IDP/CW/25-2009** (*Repairs to the IDP Housing in Mtskheta Town and Mukhrani, Saguramo and Tserovani Villages in Mtskheta District, namely: Repairs to the former holiday camp buildings No1 and 2 in Mtskheta Town, two-storied house in Mukhrani Village, five-storied house in Saguramo Village and two-storied house in Tserovani Village*). The winner in the tender was Passati Ltd with the contractual value of 271 635 Lari. The contract was signed on 8 April 2009. The completion of works was scheduled for 10 June 2009. The term for the completion of works, which was defined as 10 June under the contract, was violated. By allowing the amendment of 10 August 2009, the purchaser considered the violation of the deadline by the contractor forgivable and set a new deadline of 15 October 2009.

Despite the above said, an interesting circumstance transpired later. Namely, an amendment was made on 2 October 2009, extending the deadline for the works on 1<sup>st</sup> and 2<sup>nd</sup> position to 5 November 2009 and that for the 3<sup>rd</sup> and 4<sup>th</sup> position – to 15 October. On 24 November 2009, a delivery-acceptance act was drawn up by the parties, which said “the works were completed on 12 November although the works, under the contract, were to be completed on 5 November 2009. The company was therefore fined with 9300 Lari.” We think that the application of such a sanction is too symbolic. Given that the deadline for the completion of works was not the 5<sup>th</sup> of November but 15<sup>th</sup> of October 2009 for the 3<sup>rd</sup> and 4<sup>th</sup> positions, the reference point for counting the fine for these positions should have been 15 October instead of 5 November.

**Example 2. Tender Package No SB/IDP/CW/16-2009** (*Repairs to the IDP housing in Gardabani Town*). The contract on public procurement was signed with Dagi Ltd on 16 March 2009. The completion of works was scheduled for 23 August 2009. On 17 June 2009 an addendum to the contract was signed, postponing the deadline for the completion of works from 23 August 2009 to 23 September 2009. By the addendum of 17 June 2009, the deadline for the completion of reinforcement works for the building No13 and the installation of outside water and waste water system was defined as 8 November 2009, while that for other works - 23 September 2009. Thereafter, on 3 November 2009, the amendment was made for the third time and the deadline for the completion of works was extended to 25 December 2009. It is important to note that by the time the contract was amended the deadline for certain types of works (23 September 2009) had already been passed and the company was to be fined.

The study of public procurement materials also revealed that all the contracts on public procurement included the following rule/method for the delivery-acceptance of completed works: the supplier, in case the works were completed, had the obligation to notify the purchaser about it in writing and the purchaser was to perform a final delivery-acceptance of works within two weeks' time. These procedures were fully observed only in several cases. Other procurement materials do not contain any official document evidencing the completion of works between the supplier and the purchaser.

**Conclusion:** The above quoted two examples make it clear that the purchaser did not observe the timeline for the completion of works and as the contracts were amended frequently and deadlines postponed, the suppliers were rarely fined for the violation of the specified terms.

### **2. Statistics – participating companies, financial volumes of works performed by them and number of procurements**

It is important to underline that:

- ✓ The purchaser – the Municipal Development Fund - administered and expended **105 663 235 Lari** of financial allocations for the rehabilitation of IDP housing during the year 2009;
- ✓ Public procurements were carried out through financial allocations on **85 projects**;
- ✓ **67 465 640 Lari** was defined as the total value of the best proposals, and accordingly, the total value of contracts, selected through competitive bidding;
- ✓ The cost of contracts increased by **18 000 000 Lari** in total until before the completion of works;

#### **Financial resources spent during public procurements, percentage**

- ✓ The total cost of public procurements increased up to **85 500 000 Lari**;
- ✓ **101 construction and other companies** participated in public procurement;
- ✓ **26 companies** got state orders and carried out procurement;
- ✓ Two companies – Block-Georgia Ltd and New-Energy Ltd got the state order of **37 400 000 Lari** and gained advantage on **34 positions**;
- ✓ The final cost of **Tender Package No SB/IDP/CW/25-2009 Lot**, with the supplier being Passat Ltd, was increased by **294 percent**.

**It is very important to emphasize that the advantage on almost half of 85 public procurement positions – 34 positions – was gained by two companies. These companies and the financial amount expended by them (37 400 000 Lari) account for almost half of state financial allocations.**

	Tender No	Number of tenders with awarded contracts	Total cost of winner proposals by purchasers	Cost of contract after the increase	Amount of increase in the contract cost	Percent of increase in the cost of contract
1	New Energy Ltd	15	12,181,706	16,066,915	3,885,209	31.9
2	Block Georgia Ltd	19	17,358,008	21,312,918	3,954,910	22.8
3	Dagi Ltd	6	5,093,772	7,672,234	2,578,462	50.6
4	Axisi Ltd	6	5,074,267	6,236,638	1,162,371	22.9
5	Artex Ltd	1	570,547	953,195	382,648	67.1
6	Sani Ltd	2	2,220,541	2,763,887	543,346	24.5
7	Gilmari 2 Ltd	4	2,922,643	3,578,699	656,056	22.4
8	Anagi Ltd	2	1,550,265	2,038,958	488,693	31.5
9	Mshenebeli 80 Ltd	4	5,619,013	7,231,914	1,612,901	28.7
10	Nova Ltd	1	170,184	208,193	38,009	22.3
11	Oda Ltd	4	3,721,503	4,541,992	820,489	22
12	Dasavletgazmsheni Ltd	1	1,213,718	1,346,151	132,433	10.9
13	Iberia 21 Ltd	1	331,571	370,235	38,664	11.7
14	VIP Design Ltd	1	891,940	1,171,670	279,730	31.4
15	Erisimedi Ltd	1	550,220	550,220	-	0
16	Monolitmsheni Ltd	2	2,272,309	2,536,209	263,900	11.6
17	Daviti Ltd	1	598,760	723,827	125,067	20.9
18	Passat Ltd	1	236,131	930,856	694,725	294.2
19	Archstudia peristyle Ltd	3	455,112	519,301	64,189	14.1
20	Poni Ltd	2	488,184	542,864	54,680	11.2
21	Berdi Ltd	2	375,569	452,543	76,974	20.5
22	JSC Sakhidroenergomsheni	1	610,307	610,307	-	0
23	Ornamenti Ltd	2	1,750,332	1,955,073	204,741	11.7
24	Erkeri Ltd	1	279,854	301,252	21,398	7.6
25	Geocolori Ltd	1	433,325	477,625	44,300	10.2
26	JSC Tbilsresmsheni	1	459,996	459,996	-	0
	<b>Total</b>	<b>85</b>	<b>67,429,777</b>	<b>85,553,672</b>	<b>18,123,895</b>	

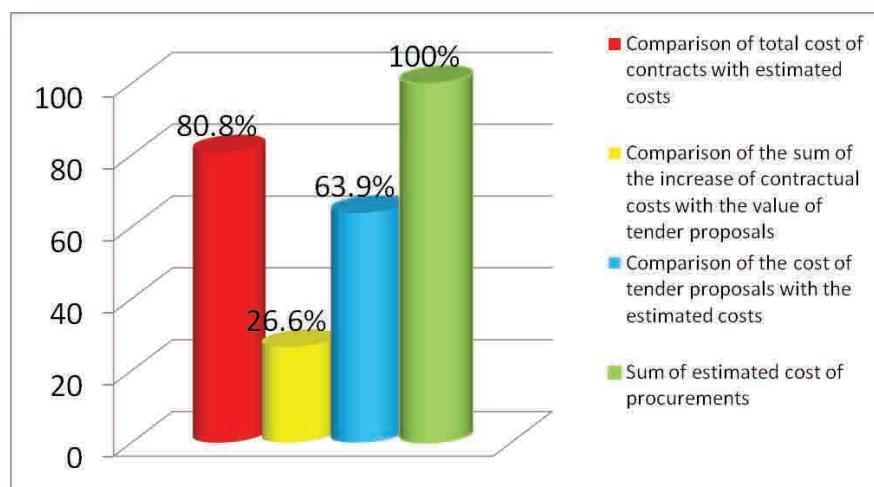
### **3. Correlation of public procurement planning - estimated cost of procurement, amount of financing required by a tender proposal, size of increase and increased contractual cost**

The analysis of financial resources administered through public procurements reveals a common trend proving once again the existence of in the above presented procurements. Comparing the sum of tender proposals with the estimated costs of procurements one can see that contenders requested about 64 percent of the estimated cost of procurement for the performance of specified works. This ratio is too low and means that companies may have submitted unrealistic bills of quantities for the purpose of gaining advantage over others. An imperfect public procurement has derailed the development of tender from a right direction. Namely,

- Proposals submitted by contenders were selected, evaluated and their competitiveness established only by one priority coefficient – the price. The contenders were therefore motivated to offer unreasonably low prices to gain advantage over others.
- Other possibilities and resources associated with the contenders, which could have been applied to compare the companies and reveal the best one, were translated into qualification requirements. Therefore, instead of assessing these resources by the priority coefficient and thus selecting better proposals, high qualification requirements were established and the companies were not compared from this angle. Moreover, they turned into some sort of administrative barriers and obstacles.

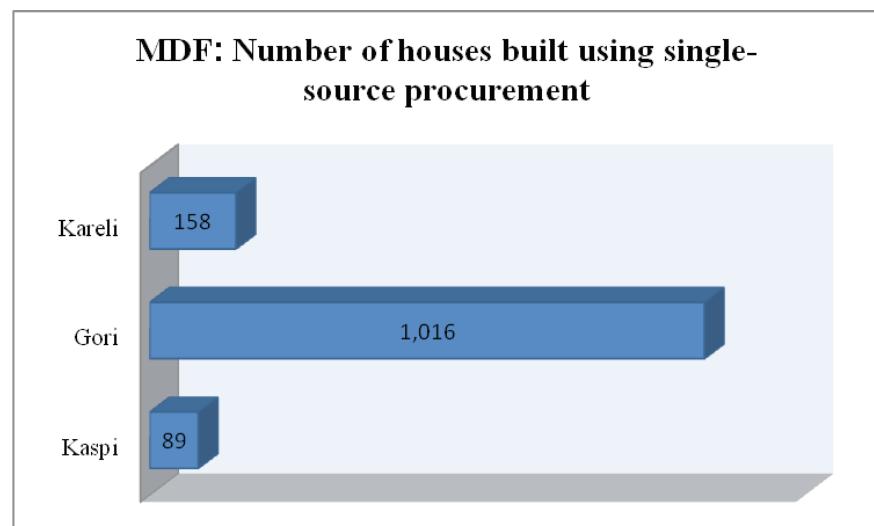
Every contract was subject to two to four amendments afterwards, increasing the cost of contract. The parties made references to additionally emerged volumes of work as to the ground for the changes. The financial analysis proved that the cost specified in tender proposals increased by 27 percent in total. The size of the increase is unjustified in fiscal terms and clearly indicates to two negative aspects of the public procurement:

1. No doubt that public procurement was prepared poorly and superficially, with an engineering design and cost-estimate documentation having flaws and being incomplete. Therefore, a purchaser had no longer the true information on financial amount of works to be performed;
2. High increase in costs of contracts afterwards, almost entirely ruled out and neglected the content and principles of competitiveness of tender in fiscal terms.



## 2. Analysis of public procurements carried out by the MDF through direct contracting

With 42 000 000 Lari allocated by the Government of Georgia, the MDF built 1 263 buildings for IDPs, of which 89 in Kaspi district, 158 in Kareli district and 1 061 in Gori district.



To this end, 16 contracts were awarded of which 14 were signed on 16 September and the remaining two on 22 September.

17 November 2009 was set as the deadline for the completion of works in 13 contracts while 20 November was the deadline in three contracts.

The cost of contract was increased in 14 out of 16 contracts. The deadline for the completion of works was changed in 13 out of 16 contracts.

In total, the initial cost of construction works increased by 1 194 691 Lari as a result of changes to the contracts.

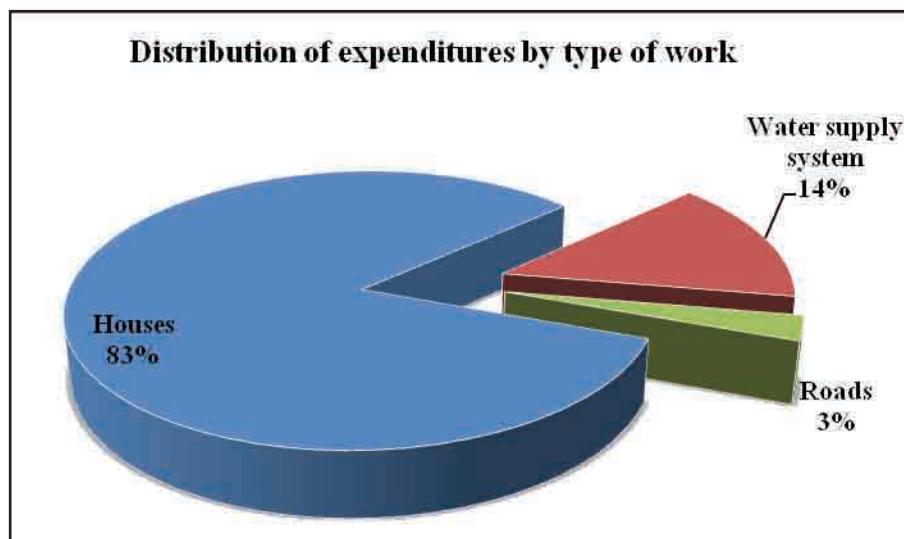
<b>Contractor</b>	<b>Initial cost of contract</b>	<b>Size of increase</b>	<b>Final cost</b>
<b>1</b> Goni	787 725. 60	10 067. 7	797 793. 30
<b>2</b> Injmsheni	1 522 936. 16	11 511. 35	1 534 447. 51
<b>3</b> Tbilmretsvmsheni-3	708 953. 04	13 798. 69	722 751. 73
<b>4</b> Intermsheni AP	1 024 043. 28	18 186. 87	1 042 230. 15
<b>5</b> Imereti 2000	787 725. 60	22 129. 57	809 855. 17
<b>6</b> Er-ti-ji	787 725. 60	25 586. 19	813 311. 79
<b>7</b> Nola	2 258 146. 72	27 898. 4	2 286 045. 12
<b>8</b> Mshenebeli 80	787 725. 60	34 207. 65	821 933. 25
<b>9</b> Oda	787 725. 60	36 753. 73	824 479. 33
<b>10</b> Construction company #3	2 625 752	46 633	2 672 385
<b>11</b> Axis	2 625 752	81 072. 25	2 706 824. 25
<b>12</b> Aksmsheni	4 253 718. 24	277 886. 7	4 531 604. 94
<b>13</b> Planeta	4 148 688. 16	285 095. 53	4 433 783. 69
<b>14</b> Block-Georgia	4 201 203. 20	303 863. 83	4 505 067. 03
Total:	27 307 820. 80	1 194 691. 46	28 502 512. 26

The MDF expended 41 630 652,07 Lari for public procurement through direct contracting. This amount was distributed among the completed works as follows:

The construction of IDP houses - 34 407 795,6 Lari;

Water supply system- 6 027 440,7 Lari;

Roads - 1 195 415,77 Lari.



For the purpose of ensuring roads and water supply system for IDP settlements, the MDF signed 27 contracts in total and spent the total of 7 229 829,62 Lari. Through amendments the cost of contract increased in 12 out of 27 contracts and decreased in four. The deadlines for the completion of works were postponed in eight contracts.

### **Price correction / is it possible to change prices in contracts on public procurement?**

According to 1<sup>st</sup> sentence of paragraph 47 of the general terms<sup>3</sup> of the contracts awarded to construction companies by the MDF for the construction of IDP houses “prices will be corrected in accordance with the fluctuation of the value of costs only in case if this is envisaged in special conditions of a contract.” After that the formula is provided for the calculation of the coefficient for price correction.

Paragraph 47.1 of the special terms of the contract says that “pursuant to paragraph 47 of the general conditions of a contract, the contract is not subject to price correction.” As it can be seen, the formula provided in the general terms of a contract is not applied in the given case as the contract is not subject to price correction at all. Then, how can the change in prices of 16 out from the 27 contracts awarded to construction companies by the MDF be justified?

Article 26 of the Regulation on the Rule for Conducting Public Procurement, approved by the Ordinance #1, dated 3 January 2006, of the chairman of the State Procurement Agency, regulates the supervision of the performance of contracts on public procurement. Paragraph 12 of the above article says: “Conditions of a contract on public procurement shall not be changed if this change increases the cost of contract or worsens the terms for a procuring entity, except for the cases stipulated in article 398 of the Civil Code. The terms of a contract are reviewed in accordance with the rule established by the Georgian legislation.” The extension of deadlines for the completion of works can also be regarded as the worsening of the terms of contract.

Article 398 of the Civil Code of Georgia concerns the adjustment of the contract to changed circumstances. Moreover, for the application of the given article it is important that circumstances, which constituted the grounds for the execution of contract, clearly change after the execution of the contract, thus providing the ground for a reasonable expectation that should these changes occur earlier, the parties would not have entered into this contract or would have entered on different terms in order to accommodate these changes. Such type of changed circumstances would be the instances where the customer (MDF), after the execution of the contract, materially revised the project submitted to the contractor, altering the cost estimate of the contract and requiring the construction of qualitatively different houses. However, those circumstances, which led to changes to the given contracts, cannot be qualified as such instances.

### **Time Limits**

Under the article 416 of the Civil Code, the parties may also envisage additional measures in the contract for ensuring the performance of obligations. Penalty is one of such measures. This measure of ensuring the performance of an obligation is an amount of money, determined by mutual agreement of the parties, to be paid by the debtor in case of non-performance or improper performance of an obligation.

If the penalty is envisaged for the cases when the debtor fails to perform the obligations on time, the creditor can demand the payment of a penalty and the performance of the obligation simultaneously.

Article 49.1 of special conditions of the contracts awarded by the MDF provides for the cases of violation of deadlines for the completion of works and stipulates: “Penalty for the violation of the deadline for the completion of works shall be 0.1 percent of a unit price per unit a day. The maximum amount of the penalty for the violation of the deadline for the completion of works shall be 10 percent of the final cost of the contract.”

According to paragraph 2, article 361 of the Civil Code of Georgia, “The obligation must be performed duly, in good faith, and at the time and place determined.” Therefore, the MDF was obliged to penalize contractors in case of violation of deadlines and deduct the amount of penalty from the payment to them. Instead, the MDF

<sup>3</sup> Contracts awarded by the MDF contain two parts: special conditions and general conditions. The idea of such a division is that in case of collision, the provisions in special conditions of the contract are applied. Using the Civil Code definitions, the general conditions of the contract are the same as standard conditions of the agreement, which pursuant to paragraph 1, article 342 of the Code, “are provisions prepared in advance for repeated use that one party (the offeror) proposes to the other party, and which stipulate rules that deviate from, or supplement, norms prescribed by law.” Special conditions of the contract, on the other hand, represent conditions of the contract determined in detail by the parties (paragraph 2, article 342). As per paragraph 3, article 342 of the Civil Code of Georgia “The terms agreed upon by the parties individually shall prevail over standard contract terms.”

used to agree to the changes to the contracts and extend the terms determined for the completion of works. The 2008 performance report of the Chamber of Control of Georgia also underlined the general practice "that the customers failed to apply sanctions determined in contracts towards violators and the state budget had lost significant amounts"<sup>4</sup>.

### **Advance payment and lack of the guarantee mechanism**

Paragraph 51.1 of special conditions of the contracts awarded by the MDF provides for advance payments: "advance payment shall comprise 50 percent of the contract price and be paid to a contractor within 1 week of the execution of the contract." According to paragraph 43.1 the schedule for the payment is determined as follows:

1. Advance payment - 50 percent of the contract price
2. One month later - 25 percent of the contract price
3. Two months later after the completion of the contract - 25 percent of the contract price."

According to paragraph 18, article 26 of the regulation on the Rule for Implementing State Procurements, "In case of an advance payment, a supplier shall submit to a procuring entity a guarantee on the amount similar to that of advance payment in the form and of the validity as determined in a contract on public procurement." It should be noted that pursuant to paragraph 52.1 of special conditions of the contracts awarded by the MDF, "The guarantee of the contract implementation is the equivalent to the following minimum amount of the contract price in the form of percentage: not applicable." It should be noted that contracts structured according to the given form run counter to the regulation on public procurement. The provision of pre-payment in the contract without a guarantee mechanism is a huge risk. It is for the insurance of this risk that the special norm exists in the regulation. Despite its obligatory nature, it was not used in the contract.

<b>Contractor</b>	<b>Final cost</b>	<b>Date and amount of advance payment</b>	<b>Date and amount of mid-term payment</b>	<b>Date and amount of final payment</b>
1 Goni	797 793. 30	17.09.08; 393 862. 80	17.10.08; 196 931. 40	28.11.08; 206 999.10
2 Inzhmsheni	1 534 447. 51	17.09.08; 761 468. 08	17.10.08. 380 734. 04	08.12.08. 392 245.38
3 Tbilimretsvmsheni-3	722 751. 73	17.09.08; 354 476. 52	17.10.08. 177 238. 26	28.11.08. 191 036. 95
4 Intermsheni A&P	1 042 230. 15	17.09.08; 512 021. 64	17.10.08. 256 010. 82	03.12.08. 274 197.69
5 Imereti 2000	809 855. 17	17.09.08; 393 862. 80	17.10.08. 196 931. 40	28.11.08. 219 060.97
6 Er-ti-ji	813 311. 79	17.09.08; 393 862. 80	17.10.08. 196 931. 40	28.11.08. 222 517.59
7 Nola	2 286 045. 12	17.09.08; 1 129 073.36	17.10.08. 564 536. 68	08.12.08. 584 992.14
8 Mshenebeli 80	821 933. 25	17.09.08; 393 862. 80	17.10.08. 196 931. 40	28.11.08. 231 139.05
9 Oda	824 479. 33	17.09.08; 393 862. 80	17.10.08. 196 931. 40	01.12.08. 233 685.13
10 Construction company #3	2 672 385	17.09.08; 1 312 876	17.10.08. 656 438	03.12.08. 703 071
11 Axiisi	2 706 824. 25	17.09.08; 1 312 876	17.10.08. 656 438	24.11.08. 737 510.25

<sup>4</sup> 2008 Performance Report of the Chamber of Control of Georgia, p. 10.

<b>12</b> Aksmsheni	4 531 604. 94	22.09.08; 2 126 859. 12	20.10.08. 1 063 429.56	08.11.08. 243 000 08.12.08 1 091 519.55
<b>13</b> Planeta	2 336 919.28	17.09.08; 1 168 459.64	17.11.08; 584 229.82	
	4 433 783. 69	22.09.08; 2 074 344.08	17.10.08. 140 098.24	03.11.08; 237 000 12.12.08; 1 071 742.65
<b>14</b> Block-Georgia	4 505 067. 03	22.09.08; 2 100 601.60	17.10.08. 1 050 300.80	08.11.08. 240 000 08.12.08. 1 100 906.85
<b>15</b> Lazo Investi	3 518 507.68	17.09.08; 1 759 253.84	13.10.08; 879 000	21.11.08; 880 196.22
Total:	34 357 939.22	16 581 623.88	7 393 111.22	8 860 820.52

### Defects/quality control

Paragraph 35.1 of special conditions of the contract specifies that “the period of the responsibility for defects comprises 365 days.” Paragraphs 33 – 36 of the general terms of contract also deal with this issue. The part on the definition of terms of the contract also provides the definition of “defect”<sup>5</sup>: “Defect means any part of works which cannot be regarded as completed according to the requirements of the contract.” The given term is not quite clear, especially considering that the regulations concerning defects are provided in the chapter on Quality Control. How can the quality be controlled when defects are limited to “uncompleted works” alone? For example let’s assume that the contract envisages the painting of façade. If the performance quality of this type of work is poor and the paint soon starts falling off the walls, will it be qualified as a defective, low-quality performance of work, given the definition in the contract? A clearer and broader definition of this term should have been provided and used by the MDF.

To find out how efficiently the MDF used the period for imposing responsibility for defects, GYLA submitted a relevant application to this entity. In response to our letter we were supplied with 17 acts on the elimination of defects. It should be noted that these acts do not have some standardized form. Part of the supplied acts includes a list of those defects that have been eliminated. Several documents do not include such lists. Twelve acts include the table showing the data only on the address of the house, name, surname and signature of the owner of this house. The remaining five acts have an additional column “description of a defect.” Moreover, the authenticity of signatures in the acts gives rise to doubts.

As the MDF informed, “in accordance with the terms of the contracts, the contracting organizations eliminated the defects that were caused by them. The improvement of defects on internal walls, ceilings and floors was not carried out as they were caused by the speedy performance of works under unfavorable climatic conditions... By the decision of the Government of Georgia, these defects will be improved within the framework of a separate project to be implemented throughout 2010.” However the defect may be associated with the low quality of performance rather than “unfavorable climatic conditions.” The acts also indicate the improvement of all the defects “except for those on internal walls, ceilings and floors”, although neither the MDF nor the contractor separate defects caused by climatic conditions from those resulting from the poor performance of works. We are now unaware whether these defects can be eliminated under a separate project, how much it may cost and whether it will be cost effective to launch this project.

### Failure to perform/properly perform works

Most of the contracts awarded by the MDF through direct contracting are about the construction of new IDP houses in Shida Kartli region (Gori, Kaspi, Kareli municipalities). These contracts envisaged the construction of the total of 1263 houses. Within the scope of the monitoring, representatives of GYLA visited nine villages of Gori, Kaspi, Kareli municipalities (Berbuki, Shavshvebi, Khurvaleti, KaraleTi, Skra, Mokhisi, Akhalsopeli, Teliani, and Metekhi). The most interesting part that has been revealed is that part of works envisaged in the cost estimate was either not performed or performed were poorly. For example, 536 houses were built

<sup>5</sup> Subparagraph (k), paragraph 1.1 of general terms of the contract.

in the villages of Berbuki, Khurvaleti, Skra and Shavshvebi. The cost estimate envisaged the construction of a shed for cattle for each house; however, this type of work was not performed at all. The cost estimate priced this facility at 640 Lari each. This price multiplied by 536 houses makes up 343 040 Lari. Nevertheless, the contractors received all the sums specified in the contracts. Any changes concerning the sheds for cattle were not made to the contracts. The material provided by the MDF does not contain a document which would explain the above mentioned failure.

Representatives of GYLA visited those IDP settlements that were constructed by the order from the MDF. The site visits revealed that the IDP houses have some flaws: walls have developed small cracks; roofs leak when rain, having caused the deformation of ceilings. In a year's time of the completion of construction works, plaster fell off the walls at places. Beams of floors separated from each other, allowing mosquitoes and plants penetrate the house in summer. Metal-plastic windows and latches are deformed and dangling and therefore cannot be easily closed or opened. Water penetrates the metal-plastic windows during the rain. Refugees complain that the walls were wet when they moved in and therefore, the walls are always covered with mould. Plasterboard material used for ceilings is so thin that it easily develops cracks. Lofts cannot be used for storing anything because the ceiling cannot bear the weight. The inhabitants complain that the building has no storage space. According to the contract, thermal insulation was to be made by means of glass-wool fabric. As refugees explain, some houses are fully covered with this fabric; others are covered in patches, whereas some houses are not and only unfolded rolls of this material are left in the lofts. Due to the lack of thermal insulation vapor transforms into water drops, damping the ceiling and causing its deformation. Some inhabitants have made a hole in the ceilings in order to prevent water from accumulating and the ceiling from caving in. Such problems are common to almost all the settlements, just degree of acuteness vary.

### **Engineering-geology researches and conditions**

GYLA requested and studied the copies of the documents describing the engineering geology conditions of the territories allotted for the construction of IDP houses. The mentioned documents are signed by specialists of JSC Sakkalakmshenproekti, the implementing entity of engineering geology researches, but they do not bear the date when these documents were drawn up and signed. The introductory part of the document indicates only the period when the engineering geology research was conducted – September 2008. On 18 September 2008, the corresponding contract was signed between the MDF and JSC Sakkalakmshenproekti. 19 September was specified as the date for the commencement of works whereas 20 October as the date for the completion. The delivery-acceptance act was signed on 24 October.

It seems that the above mentioned researches were launched after the commencement of construction works as the date for the commencement of works was defined as 17 September in 14 contracts and 23 September in two contracts. The contracts on the procurement of construction works were executed two days earlier. This indicates that the engineering geology researches of the selected territories were of a symbolic importance and were not oriented on any result. This was also proved by the documents drawn up by JSC Sakkalakmshenproekti, which describe the conditions characteristic for the territories allotted for the construction works. They also provide relevant recommendations. However, they were not implemented – we failed to find any contract concluded by the MDF to this end:

<b>Settlement</b>	<b>Engineering geology conditions</b>	<b>Recommendation</b>	<b>Execution</b>
Karaleti	Swamp plants are spread to the east of the territory, in the adjacent stripe, which indicates that during flood-times the water rises in these areas to the ground level.	Given high levels of ground waters and the threat of flooding of the territory, it is necessary to arrange a drainage system which would exclude the possibility of ground waters rising and inundating the territory.	-
Berbuki	The existing landscape allows the territory, especially its northern and western parts, to be flooded by atmospheric and river waters. The allotted territory was used as a testing ground. According to local population this territory was known as "rotten" due to the lack of lands. The territory is crisscrossed with 1,5 – 20 meter deep open trenches with water standing at 0,5 meter, on average, from the land surface. The trenches are covered with swamp plants. Atmospheric precipitations and the increase in the flow of river water may raise the water levels on the territory to almost the land surface.	One of necessary conditions is to clean and fix existing trenches, which will help decrease a high level of existing ground waters. Measures preventing the flooding of territory should also be considered (landfill barriers, etc).	-

Skra	According to local population, during flood-times one third of the territory (the northern part close to the water pumping station) comes under water. In the upper southern part one can see the remains of the old drainage system (open and drainage wells). The existing landscape allows the territory, especially its northern part, to be flooded by atmospheric waters. The allotted territory was earlier used as a testing ground. The territory is enclosed with 1,0 - 1,5 meter deep open trench being dry at the time of research. The trenches are covered with swamp plants.	One of necessary conditions is to clean adjacent trenches and rehabilitate existing drainage system, which will prevent the flooding of the territory. Measures preventing the flooding of territory should also be considered (landfill barriers, etc).	-
Teliani	It should be noted that the water mirror is marked with significant fluctuation. During flood-times it rises to almost land surface, up to 60 percent of the total space, especially in the southern part. To divert the water from the mentioned territory, there is an open trench which is almost filled up in some places and the water flows on the surface of the land.	One of necessary conditions is to clean and fix existing trenches, which will help decrease a high level of existing ground waters. Measures preventing the flooding of territory should also be considered (landfill barriers, etc).	-
Metekhi	-	-	-
Mokhisi	According to local population, during spring flood-times the river Suramela floods the territory. They also say that there is drainage between the territory and the river, with the insufficient capacity to prevent the territory from flooding. There is a need of widening the drainage and taking improvement measures.	Given the danger of flooding the territory by the river Suramela, it is necessary to arrange a drainage system, which would prevent the flooding of the territory. It is therefore possible to clean and widen the existing drainage trench.	-
Akhalsopeli	-	Given the peculiarity of the existing landscape (a general sloping northwards), we deem it expedient to arrange an upper-trench in the southern part of the territory in order to collect superficial waters and avoid the dampening of the territory, and deem it necessary to clean and dredge the existing trenches.	-

## Gori District

### Skra

Eighty-six houses were built in the Skra village in Gori district. To this end, a contract was signed between the MDF and the Nola Ltd on 16 September 2008. The cost of contract was at 2 258 146,72 Lari. The deadline for the completion of works was set on 17 November. Mechanism for guaranteeing the implementation of the contract was not applied. By the amendment #1 to the contract, dated 17 November, the deadline for the completion of works was postponed to 22 November while by the amendment #2 to the contract on 29 November, the cost of contract increased by 27 898 Lari. By two delivery-acceptance acts, officially drawn up on 29 November, the completed works were first accepted by the MDF and then by the Gori municipality. It was precisely the latter that assumed the obligation "to maintain the built-up houses and use them as intended until before the settling of people therein."

According to the refugees living in the Skra village, the area where the construction works were performed was swampy. The surface of the ground is covered with swamp plants



preventing the inhabitants to use their small plots of land for growing vegetable gardens. Constant humidity poses danger to their health. Engineering geology researches on the site also prove that "during seasonal flood-time, as locals say, one third of the territory (the northern part close to the water pumping station) comes under water. In the upper southern part one can see the remains of the old drainage system (open and drainage wells). The existing landscape allows the territory, especially its northern part, to be flooded by atmospheric waters. The allotted territory was earlier used as a testing ground. The territory is enclosed with 1,0 – 1,5 meter deep open trench being dry at the time of research. The trenches are covered with swamp plants.



### Karaleti

A total of 480 houses were built in the Karaleti village in Gori district. To this end, separate contracts were signed with three construction companies on 22 September. These



companies were Planeta Ltd., Aksmsheni Ltd and Block-Georgia Ltd. As agreed the deadline for the completion of works was set on 20 November 2009. All the three contracts were later amended.

### Planeta Ltd

According to the contract, the Planeta Ltd was to receive 4 148 688,16 Lari for the construction of 158 houses. By the amendment #1 of 20 November, the deadline for the completion of works was extended until 26 November. The amendment #2 was introduced on 8 December,

increasing the cost of contract by 285 095,53 Lari. Two delivery-acceptance acts were drawn up on 8 December. The completed works were first accepted by the MDF and then handed over to the Gori municipality which, in its turn, assumed the obligation to maintain the built-up houses until before settling there the victims of the military conflict. The deadline for the completion of works was postponed for six days only once for the Planeta Ltd but it failed to complete the construction works by the specified time and was therefore penalized with 13 524,92 Lari which was deducted from the payment due to this construction company.

### Aksmsheni Ltd

Aksmsheni Ltd was to construct 162 houses for 4 253 718,24 Lari. By the amendment #1 to the contract on 20 November, the deadline for the completion of works was extended to 26 November. The amendment #2 made to the contract on 2 December, increased the cost of contract by 277 886,70 Lari. As the company failed to meet the postponed deadline, it was penalized with 6 796,71 Lari which was deducted from the payment to it. Under the delivery-acceptance act drawn up on



2 December, the completed works were accepted by the MDF while under the delivery-acceptance act drawn up on 3 December between the MDF and the Gori municipality, the constructed houses were handed over to the Gori municipality which, in its turn, assumed the obligation to maintain the built-up houses until before settling there the victims of the military conflict.

#### Block-Georgia Ltd

Block-Georgia Ltd assumed the obligation of constructing 160 houses for 4 201 203,20 Lari. By the amendment #1 to the contract signed on 20 November, the deadline for the completion of works was extended for 6 days - to 26 November. The amendment #2 made to the contract on 3 December, increased the cost of contract by 303 864 Lari. A delivery-acceptance act between the MDF and Block Georgia Ltd was drawn up on 3 December. Although the deadline for the completion of works was postponed, the company failed to meet it, delaying the delivery of works for 7 days. This time, the MDF applied the paragraph in the contract providing for penalizing the company for the violation of the deadline and deducted 13 257,78 Lari in the form of penalty from the payment to be paid to this company.

It should be noted that Karaleti is the only IDP settlement constructed on the order of the MDF where each house is fit with water supply and sewerage systems. The inhabitants are happy about this advantage. However, the situation existing in a month's time after the completion of the construction works was definitely not satisfactory – the plaster fell off the walls, metal-plastic windows and doors deformed making it difficult to close or open them. Water penetrates the windows during rainfall. A narrow gutter made by rainwater can be clearly seen from a provided photo.

#### Berbuki

##### Lazo Invest Ltd

Within the framework of international aid, 134 houses were built in the village of Berbuki. Corresponding contract between the MDF and Lazo Invest Ltd was signed on 16 September 2008. The cost of contract comprised 3 518 507,68 Lari. The construction company assumed the obligation under the contract to complete construction works on 17 November 2008, i.e. in two month's time of the execution of the contract. This contract is the only one the cost of which was decreased by 57,62 Lari through an amendment. A delivery-acceptance



act on 134 houses built in Berbuki was drawn up on 15 November - two days prior the deadline for the completion of works.

Representatives of GYLA inspected the completed construction works on site. The problems detected there are similar to those in other places: cracked walls, leaking roofs, separated floor planks. The photo illustrates the cracks which developed on a year's anniversary of the construction of house.

#### Khurvaleti

##### JSC Construction Company #3

A contract on the construction of 100 houses in the Khurvaleti village was signed between the MDF and JSC Construction Company #3 (16.09.08), with the total value of 2 625 752 Lari. The deadline for the completion of works was set on 17 November 2008. By the amendment made to the contract on the mentioned day, the deadline extended until 22 November 2008. With the amendment of 21 November the cost of contract increased by 46 633 Lari. The delivery-acceptance act was drawn up on 21 November between the MDF and the Construction Company, on the one hand, and

the MDF and the Gori municipality, on the other, saying that “Gori municipality accepts 100 constructed houses in the Khurvaleti village and assumes the obligation to maintain and operate them as intended until the settlement of the population therein.”

#### **Intermsheni A&P Ltd**

A contract between the MDF and Intermsheni A&P Ltd was entered into on 16 September for the construction of 39 houses in the Khurvaleti village of the Gori district with the total value of 1 024 043,28 Lari. The deadline for the completion of works was 17 November. By the



amendment #1 made on the mentioned date, the deadline was postponed until 22 November. The amendment #2 increased the price of contract by 18 186,87 Lari. Two delivery-acceptance acts were signed on 24 November on the handover of 39 houses to the MDF, first, and then to the Gori municipality which took an obligation of “maintaining and operating them as intended until the settlement of the population therein.”

The Khurvaleti inhabitants also face similar problems to those suffered by refugees in other settlements. The photo illustrates the broken off angle of the house and cracked plasterboard ceiling.

#### **Shavshvebi**

A total of 177 houses were built in the Shavshvebi village in the Gori district for the persons displaced as a result of the military action in August 2008. To this end, six contracts were signed with six companies on 16 September. The deadline for the completion of works in each case was 17 November.

#### **Imereti 2000 Ltd**

Under a contract with the MDF, Imereti 2000 Ltd assumed the obligation to build 30 IDP houses in the Shavshvebi village, with the contract value comprising 787 725,60 Lari. The amendment to the contract on 17 November 2008 extended the deadline to 22 November. Another amendment made to the contract on 22 November 2008, increased the cost of contract by 22 129,57 Lari. A delivery-acceptance act between the MDF and Imereti 2000 Ltd was drawn up on 22 November.

#### **Goni Ltd**

Under a contract with the MDF, Goni Ltd assumed the obligation to build 30 IDP houses in the Shavshvebi village, with the contract value comprising 787 725,60 Lari. The amendment to the contract on 17 November 2008 extended the deadline to 22 November. Another amendment made to the contract on 22 November 2008, increased the cost of contract by 10 067,70 Lari. A delivery-acceptance act between the MDF and Goni Ltd was drawn up on 22 November.

#### **Er-Ti-Ji Ltd**

Under a contract with the MDF, Er-Ti-Ji Ltd assumed the obligation to build 30 IDP houses in the Shavshvebi village, with the contract value comprising 787 725,60 Lari. The amendment to the contract on 17 November 2008 extended the deadline to 22 November. Another amendment made to the contract on 22 November 2008, increased the cost of contract by 25 586,19 Lari. A delivery-acceptance act between the MDF and RTG Ltd was drawn up on 22 November.

### Oda Ltd

Under a contract with the MDF, Oda Ltd assumed the obligation to build 30 IDP houses in the Shavshvebi village, with the contract value comprising 787 725,60 Lari. The amendment to the contract on 17 November 2008 extended the deadline to 22 November. Another amendment made to the contract on 22 November 2008, increased the cost of contract by 36 753,73 Lari. A delivery-acceptance act between the MDF and Oda Ltd was drawn up on 22 November.

### Mshenebeli 80 Ltd

Under a contract with the MDF, Mshenebeli 80 Ltd assumed the obligation to build 30 IDP houses in the Shavshvebi village, with the contract value comprising 787 725,60 Lari. The amendment to the contract on 17 November 2008 extended the deadline to 22 November. Another amendment made to the contract on 22 November 2008, increased the cost of contract by 34 207,65 Lari. A delivery-acceptance act between the MDF and Mshenebeli 80 Ltd was drawn up on 22 November.

### JSC Tbilmretsvmsheni - 3

Under a contract with the MDF, JSC Tbilmretsvmsheni-3 assumed the obligation to build 27 IDP houses in the Shavshvebi village of the Gori district, with the contract value comprising 708 953,04 Lari. The amendment to the contract on 17 November 2008 extended the deadline to 22 November. Another amendment made to the contract on 22 November 2008, increased the cost of contract by 13 798,69 Lari. A delivery-acceptance act between the MDF and JSC Tbilmretsvmsheni-3 was drawn up on 22 November.

## Kareli municipality

### Akhalsopeli

One hundred houses were built for IDPs in the Akhalsopeli village of the Kareli district. On this issue a contract was signed between the MDF and Axis Ltd on 16 September 2008, with the total value of 2 625 752 Lari. The deadline for the completion of works was set on 17 November 2008. The first amendment to the contract on 11 November increased the cost of contract by 81 072.25 Lari. According to the delivery-acceptance act, signed on 12 November 2008, the works were accepted by the Kareli district municipality.

Akhalsopeli was visited by representatives of GYLA in a rainy day. The major problem faced by



the population is an internal road. It can hardly be used for traffic due to deep mud. An engineering geology conclusion provided by the MDF reads: "Given the peculiarity of the existing landscape of the territory (a general sloping northwards), we deem it expedient to arrange an upper-trench in the southern part of the territory in order to collect superficial waters and avoid the dampening of the territory, and deem it necessary to clean and dredge the existing trenches." It should be noted that irrespective of the recommendation, the road construction was, similarly to other villages, also carried out in the Akhalsopeli village under the order of the MDF, which cost 60 000 Lari. However, this spending should be considered ineffective as it is impossible today to use this road. The photo clearly illustrates an entrance stairs to the cottage, covered with mud.

### Mokhisi

Fifty-eight houses were built in the Mokhisi village of the Kareli district. The construction works were performed by the JSC Inzhmsheni. A contract was signed on 16 September with the total value of 1 522 936,16 Lari. The deadline for the completion of works was set on 17 November 2008. The amendment made on the mentioned date postponed the deadline to 22 November. This move is a common practice between the MDF and its contractor, which nips in the bud the possibility of penalizing the contractor. According to article 49.1 of special conditions of the contract: "Penalty for the violation of the deadline for the completion of works shall be 0.1 percent of a unit price per unit a



day. The maximum amount of the penalty for the violation of the deadline for the completion of works shall be 10 percent of the final cost of the contract." With another amendment made to the contract the same day, the cost of contract increased by 11 511,35 Lari.

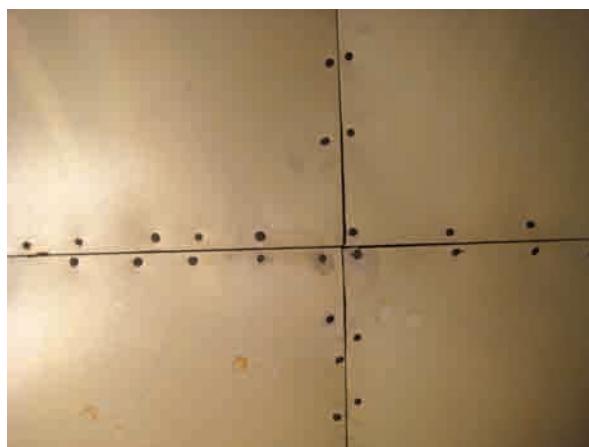
Mokhisi is one of glaring examples of the poorly completed construction works. The walls are covered with mould and are wet, plaster is removed from walls and corners of the walls are broken off. Ceilings are leaking in rain.

### Kaspi district

#### Teliani and Metekhi villages

For the construction of 54 houses in the Teliani village and 35 houses in the Metekhi village of the Kaspi district the MDF entered into a contract with Planeta Ltd, with the total value of 2 336 919.28 Lari. The deadline for the completion of works was set on 17 November. The delivery-acceptance act between the construction company and the MDF was drawn up on 13 November 2008.

The inhabitants of the Teliani and Metekhi villages face the same problems as the refugees in other settlements: separated floor planks allowing cold to penetrate in winter and forcing the inhabitants to have heaters switched on round-the-clock. In summer these openings do not prevent mosquitoes and plants from entering the house. Walls in some houses are covered with mould. Roofs of almost all the houses are leaking.



### **3. THE ANALYSIS OF PUBLIC PROCUREMENTS CARRIED OUT BY MUNICIPALITIES THROUGH DIRECT CONTRACTS**

#### **Mtskheta**

##### Terms of construction

Under the Ordinance #563 of the Government of Georgia, the Mtskheta municipality was allocated 96 775 000 Lari. According to the notice provided by the local administration body, the Ministry of Finance of Georgia transferred 99 675 000 Lari. 99 307 273 was spent in 2008. 2 500 Lari was additionally deducted from the remaining balance in 2009. By 17 March 2009, the balance of the transferred amount, accordingly, comprised 365 227 Lari.

New Energy Ltd was the major supplier of works procured by the Mtskheta municipality. In total nine contracts were signed with the company for the performance of works in the Mtskheta municipality. The total cost of works, according to the contracts, made up 94 240 000 Lari of which 76 140 000 Lari was earmarked for the construction of houses (2 700 houses at the cost of 28 000 Lari each).

##### Executed contracts

#	Date of contract	Works to be performed	Cost	Amount	Deadline for the completion
1.	10 September, 2008	Construction of residential houses in the Tserovani village	8 460 000 Lari	300	20 November, 2008
2.	10 September, 2008	Construction of residential houses in the Tserovani village	8 460 000 Lari	300	25 November, 2008
3.	11 September, 2008	Construction of residential houses in the Tserovani village	8 460 000 Lari	300	30 November, 2008
4.	16 September, 2008	Construction of residential houses in the Tserovani village	5 640 000 Lari	200	3 December, 2008 postponed to 15 December pursuant to amendments
5.	17 September, 2008	Construction of residential houses in the Tsilkani-Prezeti village	8 460 000 Lari	300	7 December, 2008
6.	18 September, 2008	Construction of residential houses in the Tserovani village	8 460 000 Lari	300	15 December, 2008
7.	3 October, 2008	Construction of residential houses in the Tserovani village	28 200 000 Lari	1 000	15 December, 2008, postponed to 1 April, 2009 pursuant to amendments
8.	3 October, 2008	The arrangement of cover of the entry road, water supply and sewerage systems and engineering design of road cover in Tserovani and Tsilkani-Prezeti villages	15 300 000 Lari		15 December, 2008
9.	15 December, 2008	The construction of sewerage treating facility in the Tserovani village	800 000 Lari	1	15 April 2009

According to the contract with New Energy Ltd on the construction of houses, the cost of one house comprised 28 200 Lari. Article 1.3 of the contract envisages the construction of houses in accordance with the specification defined in advance. In particular, it says that "the specification of houses to be built is provided in Annex #1 of the given contract." The construction works were performed by Municipalproekt Ltd, in accordance with the contract signed with New Energy Ltd. The data in the technical specifications and the sums in the contract are in compliance with each other. It should be noted that the contract signed with the Municipalproekt Ltd is not kept in the Mtskheta municipality's administrative body and therefore, the date of execution of the contract

between the parties is unclear. As regards the document containing the specifications, it only indicates the year of performance – 2008.

According to article 2.3 of the contract, “the revision of the deadline for the completion of works is allowed only by mutual agreement of parties, taking into account the existing objective circumstances.” On 20 November 2008, New Energy Ltd applied the mentioned provision. It approached the Mtskheta municipality’s administrative body and referring to various impeding circumstances that had emerged in the course of the construction, requested the revision of the deadlines specified in the contracts executed on 9, 10, 11, 16 and 17 September. In regards to this request we asked the Mtskheta municipality’s administrative body to quote those circumstances which caused the postponement of deadlines in the contracts. However, as representative of the municipality explained, the municipality does not keep the document which provides such details.

#### Rules for inspecting the performance of works

Article 6 of the contract with New Energy Ltd envisages the inspection of the compliance with the terms of the contract: “terms of the contract will be inspected by Experti Ltd (Director Tamaz Khabeishvili).” The contract, however, does not specify the type of activity which the inspection implies. Pursuant to the contract signed with Experti Ltd on 3 January 2008, the subject of the contract is “the conduct of the control by the Mtskheta municipality’s administrative body on the compliance with the terms of the contract on the procurement of construction and repair works.” Article 3.1 of the same contract allows, in separate cases, the award of additional contract for the procurement of expertise if the cost of procurement exceeds 500 000 Lari.” Contractual obligations of the Experti Ltd include:

1. To conduct an appropriate control and supervision on the compliance of works performed/to be performed and terms for the delivery thereof with the requirements of the contract and to draw up delivery-acceptance acts;
2. To regulate the process of payment to supplier in accordance with the terms of the contract on public procurement;
3. To keep record and store periodic documentation reflecting the implementation of the contract.

Given the aim of this study we requested the documents reflecting the inspections but they were not provided because the contract with Experti Ltd did not require the preparation of written documents in cases when inspections did not detect any defects. It is, however, strange, even more so, unacceptable for a public entity to require the performance of the above mentioned requirements through verbal relations alone. The only exception envisaged in the mentioned relationship is the execution of an additional contract with the Experti Ltd in case of signing a contract with the value of more than 500 000 Lari. It was precisely in the form of this exception that a contract was executed between the Mtskheta municipality and Experti Ltd on 30 December 2008. According to this contract Experti Ltd assumed an obligation to carry out the expertise of engineering design and cost-estimate documentation of the administrative building of the Tserovani village. Based on the additional contract, Experti Ltd prepared a conclusion with the recommendations which were taken into account by the implementer.

The materials provided by the Mtskheta municipality revealed that although the total work of all the procured works was above 500 000 Lari, separate contracts on their inspection were not signed with Experti Ltd. The contracts are only enclosed with delivery-acceptance acts signed by Experti Ltd.

#### Relation of New Energy Ltd with subcontractors

The Mtskheta municipality was unable to provide contracts of New Energy Ltd with subcontractors as it did not have them. The absence of contracts was explained by the rule for the procurement through direct contracting, envisaged in the Law on Public Procurement. In particular, unlike the tender, when the procurement is carried out through direct contracting, the supplier of the works has no obligation to the procuring agency to submit the contracts signed with subcontractors. Therefore, the Mtskheta municipality’s administrative body provided us with the materials on geological land survey, engineering designs for houses to be built, cost estimates and other documents delivered in the form of completed product.

1. Municipalproekti Ltd submitted the engineering design for the water supply and sewerage systems of the Tserovani settlement. The date on the design was 2008, with no month indicated. It was submitted in three parts. According to presented cost estimate the total cost of the construction of water supply and sewerage systems stood at 5 154 390 Lari.
2. Gzamshenproekti Ltd prepared the cost estimate documentation for the arrangement of streets and road cover, and installation of water-pipes in the Tserovani and Tsilkani villages and Prezeti settlements. According to the presented cost estimate the total cost of works comprised 20 376, 37 thousand Lari.

This amount was to be spent on the arrangement of pedestrian part of the roads, sides of the roads, metal pipes on yard entrances, metal pipes on road crossings, reinforced concrete pipes, in all the three villages. The cost per village comprised: Tserovani – 145,06 thousand Lari, Tsilkani – 47,07 thousand Lari, Prezeti – 45,29 thousand Lari. (The sum of these figures made up 23742 thousand Lari) According to the presented cost estimate, the supplier of the works was to spend 31,86 thousand Lari on the arrangement of a water collecting trench in the village of Tserovani. It should be noted that the above mentioned cost estimate was drawn up by Gzamshenproekti Ltd on the basis of the information provided by New Energy Ltd, which showed the length of roads to be constructed.

3. The company Geo Design Group prepared the cost estimate for houses to be built in the villages. According to presented cost estimates the internal water supply and sewerage systems were envisaged for the Tserovani village alone, whereas for the houses in Tsilkani and Prezeti - outdoor toilets. However, the cost per house in every village comprised 28 200 Lari. The same company drew up cost estimates for a kindergarten and gas supply system in the Tserovani village, with the construction of kindergarten and the gas supply system estimated at 2 400 000 Lari each. It is interesting to note that cost estimates prepared by the Geo Design Group have different titles but identical cost estimations.
4. Geoengineering Ltd provided us with very interesting and important engineering geology research materials. The company studied land layers in all the three villages. It is important to underline that a note in the introductory part of the report on the researches reads that "as the construction has been organized under extreme conditions, in order to gain time the customer was provided with all the data necessary for preparing designs for houses and deciding on the development of the territory, priori to drawing up these estimates." Although the introduction notes that all the necessary information for the construction was supplied in order to take a timely decision on the development, the concluding part of the report reads that the construction on this territory is unacceptable due to the composition of the land. In particular, seven layers of engineering geology elements (EGE) were detected in the territory allocated under the construction and the land with EGE-1 composition was not suitable for the construction unless it was removed from the place where the buildings were to be built. The conclusion says: "Buildings shall not be based on EGE-1 since it is the layer (soil layer) of special composition, condition and qualities. It should be removed from the place where building are planned to be based." The studied documents do not make it clear whether the recommendations were taken into consideration by the construction company. Even more, it is not clear whether these recommendations could have been taken into account, since the construction was already launched and in full swing.

Within the limits of allocated amounts, the Mtskheta municipality signed contracts on public procurement with VIP Design on 17 September and 7 October. Under the contract of 17 September, the contractor assumed the obligation to overhaul the following buildings: four buildings of vocational educational institution in the Tsinamdzgvriantkari village, the building of the former boarding school in the village of Saguramo and two TV buildings in the village of Galavani.

The deadline for the completion of the contract was 30 November, but under the agreement drawn up by the parties on 15 November the deadline was extended to 25 December. Pursuant to article 2.5 of the contract, the total cost amounted to 2 128 000 Lari. Although article 1.2 of the contract underlines that cost estimate of works is attached to the contract, it was not provided by the municipality. In the end, the delivery-acceptance act was drawn up by the parties on 29 December and the amount specified in the contract was transferred onto the contractor's account.

As regards the contract executed on 7 October, it can be regarded as an amendment to the previous contract because the subject of the contract was the overhaul of a two-story building of the former boarding school in the village of Saguramo and the repair of the first floor of the TV building in the Galavani village. The works were to be completed on 31 December and after their full completion, 207 000 Lari was to be paid. The delivery-acceptance act of the procurement was drawn up on 29 December 2008 which was followed by the payment. In particular, 206 700 Lari, i.e. less by 400 Lari than the specified amount, was transferred.

On 3 October 2008, a contract was executed with Effect Ltd on the repair of public school in the Akhaldaba and Prezeti villages.

The completion of contract was scheduled for 31 December 2008 while the cost of contract stood at 196 052 Lari. The contract does not envisage the obligation of preparing Defects Acts and cost estimates which should the repair of school comply with. However, Nita 2008 Ltd assumed the obligation under the contract of 26 September to prepare design and cost-estimate documents. The cost of this service made up 3 948 Lari.

The chairman of the Chamber of Control of Georgia, on 13 May 2009, issued the decree #37/43 on the extension of unplanned thematic audit. This unplanned thematic inspection was launched on the basis of decree #9/43

dated 16 March 2009, to study the efficiency of spending of budgetary means allocated for ensuring compact settlement and living conditions for people displaced due to military actions against Georgia in August 2008, in the municipalities of Mtskheta, Dusheti, Khashuri, Gori, Kareli and Kaspi. The audit was to be completed by 14 June 2009, according to the same decree.

During the inspection of the Mtskheta municipality's administrative body, the Chamber of Control detected the similar shortcomings as those mentioned above. In particular, the Chamber of Control underlined that "Defects Acts were not drawn up before the commencement of repairs to residential houses (technical condition of the building subject to repairs was not evaluated in advance). Namely, the administrative body did not draw up Defects Acts on the repair works envisaged in the contracts signed with Effect Ltd and VIP Design Ltd"<sup>6</sup>. According to the conclusion of the Chamber of Control, the executed contracts did not meet some of necessary requirements envisaged by the law, such as, for instance, inspection of the implementation of contract, the compliance of completed works with standards, etc. However, the act did not specify those requirements of the law, which were violated due to the absence of the mentioned provisions.

Paragraph 4, article 25 of the regulation on public procurement, specifies those necessary terms which shall be envisaged in a contract on public procurement, among them, the quality of goods, works, service to be purchased; if needed, the conformity with standards; timeline for the completion of works; responsibilities of the parties for the violation of the terms of the contract, etc. Therefore, the failure on the part of the administrative body to envisage the mentioned requirements in a contract on public procurement is a gross violation of the law, specifically, of the compulsory provisions of article 25 of the regulation.

Moreover, there is nothing in the act of the Chamber of Control which would describe the method of evaluating the efficiency of works performed by Effect Ltd and VIP Design Ltd, especially given that the administrative body did not know beforehand what type of repair works would be required for those eight buildings which were repaired by these companies and how much would these works cost.

Thus, we think that in this part the Chamber of Control auditor's report is not complete and the issue needs additional scrutiny. Even more, it does not pay any attention to the engineering geology conclusions which say that the construction on certain types of soil layers was prohibited unless these layers were removed. Therefore, it is not clear whether the buildings were constructed after these recommendations had been met.

## Gori

### Aisi Ltd

Under the contract #270 dated 16 September 2008, the Aisi Ltd assumed the obligation of performing repairs to five buildings until 25 November 2008. The cost of works totaled 200 000 Lari. The cost of each building was up to 40 000 Lari.

On 25 September 2008, three additional contracts (#291, #351 and # 370) were signed with Aisi Ltd. The subject of contract was the repair of damaged houses in Gori streets. The table below shows the streets specified in the contract. Moreover, the contract #351 makes a general reference to "other residential houses." It is also important that the Defects Acts were drawn up by the municipality on the dates indicated in the table while the cost estimates were prepared by the supplier of works and they did not bear the date of drawing up the cost estimates. The table also clearly shows that repair works were not performed in Melikishvili and Aragvi Streets. Moreover, the repair works specified in the contract #291 were performed after the execution of the contract #351. In the end, however, the amounts specified in the contracts were almost identical to those indicated in the cost estimates. For example, the total amount specified in the contracts #351 and #370 comprises 175 541 Lari with the cost estimates also showing the same amount. The contract #291 specifies 180 000 Lari whereas the cost estimate shows 183 861 Lari. In total 41+38=79 buildings were repaired.

According to the documents on the transfer of amounts, provided by the Gori administrative body, the sums were paid to the contractors in accordance with the amounts specified in the signed contracts. According to the documents on transfers, Aisi Ltd was paid 555 541 Lari, which is exactly that amount which was to be transferred under the above discussed contracts it. The schedule of transfers looks as follows:

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<sup>6</sup> See, the act reflecting the conduct of the unplanned, thematic audit by the Chamber of Control of Georgia. pp. 13-14.

### Aisi Ltd

#	Date of contract	Delivery-acceptance	Transfer	Amount in Lari
1.	16 September, 2008	20 October, 2008	16 September, 2008	200 000
2.	25 September, 2008	25 October, 2008	04 September, 2008	180 000
3.	26 October, 2008	10 December, 2008	28 October, 2008	140 000
4.	12 December, 2008	22 December, 2008	27 December, 2008	35 541

The table above clearly shows that the transfers were made in advance, one transfer was even made before the execution of the contract.

### Mshenebeli Ltd

Under the contract #209 dated 16 September 2008, the Mshenebeli Ltd assumed the obligation of performing repairs to four buildings (at #1, 3, 5, 7 Gorki Street in Gori) until 5 November 2008. The cost of works totaled 200 000 Lari. Another contract #340 was executed on 17 November 2008 with the Mshenebeli Ltd again on the performance of same works but with the deadline for the completion of works set on 25 November 2008 and the cost of contract increased. (100 000 + 99 000). The second contract, therefore, should be regarded as an agreement on amending the first one.

The timeline of mutual relationship looks as follows:

#	Date of contract	Delivery-acceptance	Transfer	Amount in Lari
1.	17 November, 2008	25 November, 2008	17 and 25 November, 2008	199 000

According to the documents, Mshenebeli Ltd completed the repairs of four buildings in eight days.

### M.G. Ltd

Under the contract #292 dated 25 September 2008, the M.G. Ltd assumed the obligation to replace crashed glasses in accordance with enclosed Defects Acts and cost estimate. The cost of contract stood at 6550 Lari (544.50 square meters) with the deadline for the completion scheduled for 10 October 2008. Five Defects Acts have been provided of which two do not bear the address of the apartments.

The contract #285 was executed on 24 September 2008 under which M.G. Ltd assumed the obligation to reconstruct the buildings of the blood transfusion centre and the professional and the vocational educational institutions in Gori.

The cost of contract stood at 980 000 Lari and the deadline for the completion was 1 December 2008. On 30 September 2008, the parties drew up an agreement act, which said that as the rehabilitation works were carried out at the state university, the repairs to the professional and the vocational educational institutions could not be launched. The contract of 24 September was amended on these grounds, instructing the implementer of works to perform repairs to the blood transfusion centre and professional educational institution (vocational educational institution was excluded). According to the agreement the cost of contract decreased from 980 000 Lari to 763 663 Lari with the latter indicated as an estimated cost. The cost estimate attached to the contract was drawn up on 24 September.

According to the explanatory note provided in the materials (it is not clear who drew it up), nine apartments were to be repaired in the blood transfusion centre, 44 apartments in the first building and 40 apartments in the second building of the professional educational institution. According to the cost estimates enclosed with the contract, the repair works in the buildings of the professional educational institution required much more amounts. In particular, the repair of both buildings cost 836 323,70 Lari in total, while the repair of the blood transfusion centre – 143 618,66 Lari. There is a big confusion with regard to the names of educational institutions in the documents attached to the contract. One document refers to first and second buildings of the professional educational institution, while the second document to technical educational institution and former music school. It is therefore ambiguous which building was repaired by the supplier of works. Besides, the facilities indicated in the contract and the facilities indicated in the agreement do not match, in other words, the names of the facilities are not indicated correctly.

Under the contract #115 dated 10 April 2009, M.G. Tbilisi Ltd assumed the obligation to rehabilitate damaged houses in the city of Gori, the villages of Karaleti and Dzevera. The deadline for the completion of the contract

was set on 10 May 2009 whereas the total cost stood at 200 000 Lari. On 5 May 2009, the parties entered into the agreement on the extension of the deadline for the fulfillment of obligations until 10 June. The Defects Acts were drawn up on 4 April 2009, by the economic and infrastructure development service of the local administrative body, whereas the cost estimate documentation was prepared by the implementer of works itself on 8 April 2009.

On 11 May 2009, the contract #147 was signed with the M.G. Tbilisi Ltd again on the rehabilitation of damaged houses in the villages of Karaleti and Dzevera. The deadline for the completion of works was 11 June and the cost of works comprised 205 000 Lari. The Defects Acts were drawn up on 4 May 2009 while the cost estimates on 8 May.

The schedule of the M.G. Ltd activity:

#	District	Type of work	Building	Private house	Cost
1.	City of Gori	Replacing window panes		122	6550
2.	City of Gori	Rehabilitation works	2		836 323.70
3.	City of Gori	Rehabilitation works		36	Not specified
4.	Karaleti	Rehabilitation works		7	5 921.64
5.	Dzevera	Rehabilitation works		21	24 424.18
6.	Dzevera	Rehabilitation works		18	Not specified
7.	Kitsnisi	Rehabilitation works		20	30 000
8.	Kitsnisi	Rehabilitation works		18	Not specified

In total, M.G. Ltd performed the works worth of 1 247 846.54 Lari. However, according to the documents on transfer of amounts, provided by the Gori administrative body, M.G. Tbilisi Ltd was transferred 6 550 Lari for the completion of the contract of 25 September 2008.

#### Moduli Ltd

Under the contract #287 dated 25 September 2008, Moduli Ltd assumed the obligation of replacing crashed glasses in accordance with the enclosed Defects Acts and cost estimate. The cost of contract comprised 21 500 Lari and the deadline for its completion was set on 10 October 2008. One defects act was submitted (1706 square meters), although two of them do not indicate the address of apartments. According to the acts on performed works, the contractor repaired crashed glasses in 182 houses.

#	Date of contract	Delivery-acceptance	Transfer	Amount in Lari
1.	25 September, 2008	10 November, 2008	25 September, 2008	21 500

#### Nola Ltd

The contracts #266, #288, #315 and #369 were signed with Nola Ltd on 16 and 25 September, 30 October and 12 December, 2008. According to the contracts, the legal person assumed the obligation to perform repair works of residential houses at #14, 16, 18, 20, 22 and 24 Sukhishvili Street in Gori. According to the contracts, however, the mentioned obligations were divided into the third, fourth, fifth and finalizing stage works. The cost of three contracts comprised 200 000 Lari each (600 000 Lari in total), whereas the cost of finalizing works - 145 507 Lari. The deadline for the last contract was set on 26 December 2008. The reason behind classifying the works by stages is absolutely unclear because the examination of the Defects Acts and cost estimates does not show that certain works were performed in stages. For example, the work involving the chiseling of windows and doors and painting thereof with water-paint in the building #18 (the volume 1 784.07; this is a total figure for all the buildings except for #14 and #16) is envisaged under the third stage works; also, the painting with water paint is envisaged in the finalizing works (the volume 675.86). Thus, these figures make us to conclude that in reality the contracts were amended and cost estimates revised to accommodate for the completion of those works which were not envisaged in the initial contract. Similar cost estimates were also presented in relation to other works. In regards to these contracts we should note that the existing damage was not identified correctly from the very beginning. Finally, the total cost made up 745 507 Lari. It is also important that Nola Ltd performed certain works through subcontractors, however, contracts with subcontractors were not provided.

#	Date of contract	Delivery-acceptance	Transfer	Amount in Lari
1.	30 October, 2008	15 November, 2008	31 October, 2008	200 000
2.	16 September, 2008	15 October, 2008	16 September, 2008	200 000
3.	25 September, 2008	15 October, 2008	25 September, 2008	200 000
4.	12 December, 2008	26 December, 2008	12 January, 2009	145 507

#### Archstudio Peristal Ltd

Under the contract #286 dated 25 September 2008, Archstudio Peristyle Ltd assumed the obligation to perform second stage rehabilitation works of the polyclinics and repair of roofs and windows of private residential houses in the combination settlement in the city of Gori. The cost of contract was estimated at 180 000 Lari, the deadline was set on 1 November 2008. An additional contract #298 on the same works (third stage) was signed with the same contractor on 2 October 2008, specifying the cost of contract as 80 000 Lari and the deadline for the completion as 1 December. One more contract #312 was signed on 23 October for the fourth stage works with the total value of 80 000 Lari and the deadline set on 15 December. And finally, the contract on finalizing works was signed on 13 November 2008, with the total value of 15 000 Lari and the completion date on 20 December. It is important to note that the defects act of the first contract envisages plastering of ceiling and walls and painting in two layers of 7000 square meter space, whereas by the defects act of the second contract (on the performance of third stage works) the same works were to be done for 1005 square meters. The same happened in case of two-part dishwashers, the number of which was initially set at 6 but later at 3.



#	Date of contract	Delivery-acceptance	Transfer	Amount in Lari
1.	25 September 2008	31 October 2008	31 October 2008	180 000
2.	2 October 2008	7 October 2008	7 October 2008	80 000
3.	23 October 2008	17 October 2008	17 October 2008	80 000
4.	13 October 2008	18 December 2008	18 December 2008	14 962.47



In total, Archstudio Peristal Ltd was transferred 354 962.47 Lari for the repair of one building. It is not clear, however, whether this amount was spent efficiently and as targeted, for there is a terrible anti-sanitary condition in the building and the sewerage system is absolutely broken, let alone the disorder and ambiguity of documents enclosed to the contracts.

Although the contract signed by the Gori municipality with Archstudio Peristyle Ltd and the cost estimate attached to it envisaged the replacement of old sewerage system, the "quality" of performed works can be clearly seen in the provided photos:

### Intermsheni Ltd

Intermsheni Ltd proved to be the largest contractor by contracts on procurement of works awarded by the Gori administrative body through direct contracting. Seven contracts (#-# 301, 305, 310, 332, 342, 364, and 375) were signed with this company in 2008 and three contracts (#-# 98, 113, 144) in 2009.

The subject of the contract was the rehabilitation of damaged buildings. It is important to note that the provided Defects Acts and cost estimates do not allow finding out whether there were instances of drawing up the mentioned documents on one and the same person or family several times. For example, two Defects Acts were drawn up in the Nikozi village on Temo Goginashvili and Teimuraz Gogniashvili. Although these acts envisage different works, it is impossible to check the accuracy of this data otherwise. This provides the opportunity for drawing up several Defects Acts on one and the same family because the beneficiaries are not identified accurately. Besides, it is not actually examined the amount of performed works by square meters.

The contracts do not indicate the number of damaged houses and the degree of damage. Every contract is enclosed with Defects Acts signed 2-5 days prior to the signing and cost estimates provided by contractors do not bear the dates. However, the contract #364 dated 9 December 2008, is not enclosed with the cost estimate drawn up for fitting windows with 1 788.00 square meters of glass.

Table of works performed by Intermsheni Ltd

#	Village	Number of houses by Defects Acts	Cost in Lari
1.	Shindisi and Pkhvenisi	392	855 239
2.	Zemo Nikozi	360	769 065.82
3.	Kvemo Nikozi	229	624 158.33
4.	Variani	232	33 071.35
5.	Karbi	762	1 429 948.47
6.	Arashenda	92	10 928.75
7.	Akhaldaba	239	60 416
8.	Kere	188	107 120.73
9.	Mereti	187	90 303.54
10.	Zemo and Kvemo Khviti	272	694 331.86
11.	Sakasheti	206	73 455.32
12.	Berbuki	23	182 008.04
13.	Dici and Kordi	472	572 506.42
14.	Tortiza	322	679 819.25
15.	Sveneti	7	751.28

It should be noted that the given table indicates not only repair works but also the replacement of window panes for the people who suffered damages. In total, according to Defects Acts and cost estimates<sup>7</sup>, Intermsheni Ltd provided assistance in 3983 cases, with the cost amounting to 6 183 124.16 Lari. The local administrative body did not provide the documents certifying the transfer of these amounts.

### Sani Ltd

Sani Ltd was another large contractor which was awarded with contracts on public procurement by the Gori administrative body. Five contracts (#-# 309, 333, 360, 372, and 382) were signed with this company.

<sup>7</sup> We put emphasis on Defects Acts because it is impossible to calculate the exact number of people who suffered damages as several Defects Acts are drawn up on one and the same person; for example, separate acts and cost estimates are drawn up on the repair of roof and replacement of doors and windows, sometimes, these works are shown together. This indicates about a chaotic drawing up of documents, which creates serious obstacles in identifying the exact situation. It should also be noted that even the costs are inaccurate as some documents do not show numbers. The provided numbers are minimal.

Sani Ltd assumed the obligation of performing rehabilitation to damaged houses in Tirdznisi and Tkviavi local councils. Requirements in the contract were identical to those of other contracts. The problem is that every contract envisaged the performance of rehabilitation works in Tkviavi and Tirdznisi villages. The study of materials revealed, however, that the works were performed only in one village. For example, according to the documents attached to the contract #373 dated 17 December 2008, the rehabilitation works were performed in the Tirdznisi village alone. In total 65 houses were rehabilitated.

Such a superficial development of compulsory documents provides the ground to assume that the parties viewed this task as a mere formality. To support this assumption, we will quote another example: the contract #382 was signed with Sani Ltd on 26 December 2008 on the rehabilitation works in the villages of Tkviavi and Tirdznisi. Although the contract was signed on 26 December, the deadline for the completion of works was set on 31 December 2008.

The defects act and cost estimate drawn up for the rehabilitation works of the house of a Brotsleti village resident in the Tirdznisi local council do not tally. In particular, the defects act shows that the house needs the replacement of tinplates over 4 square meters of space and crashed glasses over 6.60 square meters. In addition to these works the cost estimate includes the dismantling of damaged roof with the total area of 145.6 square meters, dismantling of damaged wooden beams and frame, the installation of new beams and frame, etc.

In total, Sani Ltd performed works worth 1 325 593.47 Lari. This amount was spent on the repair of 122 houses in Tirdznisi, 30 houses in Meghvrekisi, 69 in Tkviavi and 33 in Brotsleti. In total 254 buildings.

Documents certifying the transfer of the amounts were not provided.

#### Imedi-26 Ltd

Contracts were signed with Imedi-26 Ltd for the performance of works in Tkviavi and Tirdznisi local councils. The contract #99 dated 30 March 2009, envisaged 407 125 Lari for the rehabilitation of damaged houses. The Defects Acts were drawn up on 26 March 2009. Cost estimates do not bear the dates. According to the provided cost estimates the works required 407 095,87 Lari. The data by villages is as follows:

#	Village	Amount	Cost
1.	Meghvrekisi	56	291 185.41
2.	Tkviavi	16	90 138.85
3.	Tirdznisi	30	102 948.69
4.	Tergvisi	5	34 268.54
5.	Brotsleti	7	64 333.10

The contract #245 was signed with Imedi-26 Ltd again on 8 May 2009 on the performance of works in Tirdznisi local council. The cost of works comprised 179 923 Lari, the deadline for the completion was set on 1 July 2009. Although the damaged houses in the Tirdznisi local council are indicated as the object of the contract, article 5.2 of the contract defines Tkviavi and Tirdznisi local councils as the point of delivery of the procurement object.

Enclosed cost estimates are not accurate because the defects act of one particular person is enclosed with the cost estimate of another inhabitant, and they do not tally by the size of the area i.e. by square meters. For example, the roof of Izo Mosiashvili was damaged over 20 square meters whereas that of Akaki Mosiashvili over 183 square meters. Both Defects Acts are enclosed with the cost estimate of Akaki Mosiashvili, which largely exceeds the cost of assistance to Izo Mosiashvili.

According to the provided materials, the total of 129 buildings were repaired and the cost of these repairs amounted to 582 864.59 Lari.

The procurements made by the Gori municipality's administrative body for the aim of providing assistance to the people who suffered damages are marked with significant flaws. Namely:

1. Subject of a contract is too general thus allowing excess freedom to parties in their activity, which goes counter to the principle of public procurements;
2. Cost estimates attached to contracts do not bear dates, thus making it impossible to check whether they were drawn up before or after the execution of contracts. This suspicion is reinforced by the reality that Defects Acts are, normally, drawn up 2-5 days prior to the execution of contracts. Can 2-5

days be considered a reasonable amount of time for the preparation of cost estimates?

3. In a number of cases there is a discrepancy between enclosed Defects Acts and cost estimates;
4. It is actually impossible to check the spending on the rehabilitation of damaged (private) houses as it is impossible to identify the performed works by any sign (address or subject);
5. There is a significant incompliance between the quality of performed works and the terms of contract. This is even more complicated by the fact that the administrative body did not apply a contractual obligation of a contractor to improve the poorly performed work with its own means;
6. Documents certifying the transfers of amounts are not fully provided.

Bearing in mind the above flaws, according to the provided materials, the Gori municipality repaired:

- ✓ Buildings – 20
- ✓ Private houses – 4889
- ✓ Amount - 11 309 939.23 Lari

### **Marneuli**

The Government of Georgia allocated 3 660 750 Lari to the Marneuli local self-government for ensuring living conditions to people who have suffered damages. According to the information provided by the Marneuli administrative body, the municipality was transferred 3 660 700 Lari of which 3 634 521.7 Lari was spent while the remaining balance returned to the state budget.

According to the information provided by the Marneuli administrative body, seven contracts were executed for ensuring the IDPs with living conditions. In particular, seven buildings (## 1, 2, 3 4, 5, 6 and 7) in the former military settlement in the Shaumiani village were repaired.

Under the contract #257 dated 16 September 2008, Sakremmshenteknika Ltd assumed the obligation to carry out the reconstruction of the buildings #2 and #3. The cost of contract stood at 575 000 Lari and the deadline for the completion of works was 15 December 2008. In regards to the repair of buildings #2 and #3, we were provided with Defects Acts drawn up by Khurotmodzgvari Ltd and agreed with the head of economic and infrastructure development service of the Marneuli municipality's administrative body. The cost estimate documents were not provided. What is more important, it is unclear why the Defects Acts include the city of Bolnidi.

On the same date a contract was signed with Rupa Ltd, which took an obligation to carry out reconstruction of two buildings and paint facades of four buildings. The cost of contract stood at 992 588 Lari while the deadline for the completion of works was set on 16 November 2008.

On 17 September 2008, a contract was signed with sole entrepreneur Guliver Shubitidze for the reconstruction of headworks and construction of a new water carrier for ensuring water supply to multi-apartment buildings in the territory of Shaumian. The cost of contract was 177 390 Lari and the works were to be completed by 31 December 2008.

On 17 September 2008, a contract was signed with Bruni Group Ltd for the reconstruction of building #7. The cost of contract was 496 294 Lari and the works were to be completed by 1 December 2008. The Defects Acts and cost estimates are enclosed only with the material concerning the repair works of the building #7.

On 17 September 2008, a contract was signed with Elmari 2007 Ltd for the arrangement of sewerage network to ensure the sewerage system of buildings. The cost of contract was 172 445 Lari and the works were to be completed by 31 December 2008.

On 17 September 2008, a contract was signed with sole entrepreneur Avtandil Charkviani for the reconstruction of three buildings (## 1, 2 and 4). The cost of contract was 928 852 Lari and the works were to be completed by 30 November 2008.



The cost estimate for works was prepared by Khurotmodzgvari Ltd. The contract on the procurement of the mentioned service was not provided. The study of the documents proved the accuracy of the information provided by the municipality that less amounts were spent than transferred; however, the sum up of data given in the documents still did not tally<sup>8</sup>. To get additional information a clarifying application was sent to the Marneuli municipality, asking to provide the information on the reasons for the discrepancy (according to provided documents) between the transferred and spent amounts, as well as copies of delivery-acceptance acts on each completed work and documents certifying the transfer of amounts. Despite our efforts to receive information, we were supplied only with the copy of a contract signed with Khurotmodzgvari Ltd and a copy of a delivery-acceptance act for the service rendered by this company. (The date on the contract is 12 September whereas on the delivery-acceptance act -16 September). As regards other materials, the failure to provide them was explained by the fact that they were sent to the prosecutor's office.

It is important that the Agency for Procurement was unaware of the above mentioned fact. To our question as to whether the Agency for Procurement detected any violations in the conduct of public procurements by the municipalities and if yes, reacted to them, the Agency replied with the letter #2/4-2839 of November 2009, saying: "In response to the third question in your letter, as to whether the Agency for Procurement applied to the Chamber of Control of Georgia or any other entity in accordance with the ordinance mentioned above<sup>9</sup>, on the basis of paragraph 3, article 28<sup>10</sup> of the regulation on the Rule for Implementing State Procurements, we would like to inform you that the State Agency for Procurement did not apply the right envisaged in the above-mentioned article during the accounting period".

The response from the Agency is ambiguous because it did not provide an exact answer regarding the existing situation, i.e. whether the violations were not detected or they were detected but the Agency ignored the responsibility assumed under the law. The material supplied by the Agency for Procurements in regards to the procurements implemented by the Marneuli municipality, in fact, provides no data except for the information that a procuring agency formally fulfilled its obligation and sent operative reports to the Agency for Procurements. For example, the Marneuli municipality's administrative body submitted an operative report within the 10 day term specified in the law<sup>11</sup> – on 25 September 2008. However, the submission of the report was not followed by a proper scrutiny and reaction on the part of the Agency for Procurements.

In order to better inspect the situation regarding the improvement of IDP living conditions in the village of Shaumiani, Marneuli district, we decided to inspect the result and efficiency of the spending of state funds on site.



<sup>8</sup> The study of the documents revealed that 3 339 569 Lari was spent whereas the letter from the municipality indicated 3 634 521.7 Lari. Thus the difference totals 294 952.7 Lari.

<sup>9</sup> Ordinance #563 dated 8 September 2008 of the Government of Georgia.

<sup>10</sup> Paragraph 3, article 28 of the regulation on the Rule for Implementing State Procurements:

"The State Agency for Procurements is entitled:

a) In cases of breach of rules and standards established by law and relevant normative acts, or/and incorrect application thereof, to communicate these violations to violating organizations and demand from them that wrong decisions and actions be brought in line with established rules and standards, in order to avoid damage to the state. In case of the failure on the part of procuring agencies to meet this requirement or a gross or repeated violations of established norms and standards by them, to raise the issue of suspending their funding temporarily before the Ministry of Finance of Georgia, ministries of finance of the autonomous republics of Abkhazia and Ajara, local finance bodies; (21.01.2008 #1)

b) In cases of breach of rules and standards established by law and relevant normative acts, inflicting damage to the state during the implementation of public procurements, detecting the facts of the abuse of power by high officials, to provide the information to the Chamber of Control of Georgia and raise the issue of administrative and criminal responsibility before the relevant bodies."

<sup>11</sup> According to paragraph 7, article 29 of the regulation for Rule for Implementing State Procurements, "In case of public procurement through direct contracting, a procuring agency shall submit an operative report to the State Agency for Procurements within 10 calendar days of the signing of a contract on public procurement if the costs of goods or services exceed 100.000 Lari and cost of works exceeds 200.000 Lari."

The provided Defects Acts and cost estimates list all those minimal amount of works which were necessary for ensuring IDPs with living conditions, including plastering walls, covering walls with wallpaper and painting, arranging the floor and covering it with laminated material, arranging sewerage systems, installation of toilet bowls and sinks. This is the least of the list which was envisaged under these works.

The inspection of the completed works on site made it clear that the state funds were spent unreasonably and inefficiently, namely, it showed that the plastering of walls was not performed and the walls were just covered over with wallpaper, as well as the walls in toilets which were painted without any prior plastering. Holes around the doors were not patched but just covered over with wallpaper. The most alarming was the situation in the building #1 where the sewerage system was out of order with waste water dripping from the upper floor. In particular:

- Old plaster was to be scrubbed off from ceiling and walls, walls were to be first plastered and then painted. Walls have cracks and wallpaper is glued to walls which were not plastered;
- Roof was not replaced in the building #4;
- Sewerage pipes ( $1600 \text{ m}^2$ ) were to be installed inside the building – waste water is dripping on every floor and sinks and toilet bowls are poorly installed.

### Bolnisi

Bolnisi municipality was allocated 325 000 Lari under the ordinance. However, according to the incomplete documents on transfer of amounts provided by them, the spending by the municipality comprised 363 206 Lari, which exceeds the allocated amount by 38 206 Lari. The explanation given by the administrative body regarding the difference was that additional amounts were allocated from the local budget because "325 000 Lari envisaged only the reconstruction and engineering design works for residential houses. In addition to that, a drinking water supply pipes were built to the cottages in the Poladauri village as well as extensions to these cottages for bathrooms. The mentioned amount was allocated from the local budget". According to the materials provided by the administrative body, the mentioned works required 25 895 Lari. Below, we will discuss in detail every contract and the amounts transferred for their implementation. In total, however, the amount transferred exceeded by 12 311 Lari the amounts specified in the contracts and cost estimates.

On 16 September 2008, a contract #185 on public procurement was signed with a sole entrepreneur Besarion Gabidzashvili on the procurement of repair works for nine residential cottages in the former military settlement in the Poladauri village. The cost of contract comprised 45 000 Lari. The basis for this contract was the ordinance #598 dated 12 September 2008 of the Government of Georgia, instead of #563.<sup>12</sup>

The deadline for the completion of the contract was 15 October. The obligations assumed by the supplier of works under the contract was fulfilled in due time while the transfer of amounts was made stage by stage in October 2008 and January 2009. The schedule of transfers is as follows: 2,227.00 Lari on 1 October, three transfers - 10,553.60 Lari; 6,079 Lari; 17,352.80 Lari - on 29 October and two transfers - 13,327.20 Lari and 2,638.40 Lari - were made on 9 January. Therefore, according to the documents on transfers, the total amount transferred made up 79 872 Lari. It should be noted here that according to the acts on completed works the cost of works performed by the sole entrepreneur Besarion Gabidzashvili made up 81 350 Lari.

The contract awarded to the sole entrepreneur Besarion Gabidzashvili is of very general nature<sup>13</sup> and it is unclear whether the construction of eight bathrooms for nine cottages were performed by entrepreneur



<sup>12</sup> By the ordinance #598 dated 12 September 2008 of the Government of Georgia, an amendment was made to the ordinance #563 of 8 September 2008.

<sup>13</sup> It is important that the awarded contracts on the procurement of rehabilitation works for IDP houses are mostly of such a general nature and lack the concretization of the subject of contract. Chaotic supply of materials also complicates the clarification of details as it is unclear to figure out which cost estimate represents an appendix to which contract.

Besarion Gabidzashvili or another person. According to documents on transfer of amounts, we can only assume that the mentioned works were performed by the sole entrepreneur Besarion Gabidzashvili.

It is however, absolutely inefficient and unwise to spend such amounts from both state and local budgets as IDPs have not moved into these cottages. Moreover, the terms of contract mainly envisaged face-works of the buildings when the first building was covered with cracks and the roof of the fourth building was leaking which resulted in the caving in of the ceiling.

The measures carried out for ensuring the living conditions for IDPs in the Kvemo Bolnisi village in Bolnisi district deserves a positive assessment. On 16 September 2008, a contract #186 was signed with Saktekmshenteknika Ltd for the overhaul of a former kindergarten in the Kvemo Bolnisi village. The cost of contract stood at 280 000 Lari while the deadline for the completion of works was 30 October. According to the documents on the transfer of amounts Saktekmshenteknika Ltd was transferred 279 997 Lari and this amount tallies with the amount indicated in the facility handover act. However, it shows the cost of engineering design works of 2800 Lari which, in total, exceeds the amount specified in the contract (280 000 Lari) and sums up to 281 800 Lari. The mentioned sum was reflected in the facility handover act drawn up on 12 December 2008.



According to the provided documents, the design works were performed by Proekti Ltd which was awarded a contract #203 on 8 October 2008 (it is not clear what sort of design works were performed by this company as according to the contract the works should have been almost entirely completed by that time), following which the supplier of works assumed the obligation to provide engineering design service for the construction-repair works to be carried out in 2008. In particular, according to paragraph 5.4 of the contract, the supplier was to prepare cost estimate documentation on additional works for cottages in the Poladauri village, for 300 Lari.



Similar contracts #184 and #204 are signed with Khurotmodzgvari Ltd on 9 September 2008 and 8 October, respectively. Under one of the contracts, a cost estimate documentation was to be prepared for the works involving the installation of water supply network for the cottages in the Poladauri village, whereas another contract envisaged the preparation of technical documentation for the overhaul of the former kindergarten in the Kvemo Bolnisi village and the repair to nine residential cottages in the former military settlement in the village Poladauri. The rule for calculating the amount to be paid for completed works to Khurotmodzgvari Ltd is of particular interest. The introduction of the contract notes that "the cost of service to be procured shall be defined as the percentage of the cost of construction-repair works specified in the special conditions enclosed to the contract (paragraph 5, subparagraph 5.4). Therefore, the amount to be paid under the special conditions was defined as 1 percent of the cost of works. The Bolnisi municipality transferred 3 337 Lari on 1 October 2008.

It is important that the amount envisaged in advance in the cost estimate prepared by Khurotmodzgvari Ltd totaled  $53\ 630 + 282\ 300 = 335\ 930$  Lari, i.e. the cost of works to be performed exceeded the allocated amount. In the end, according to the documents on transfers, the implementing entity was transferred 279 997 Lari, less by 27 003 than the allocated amount. Finally, the Bolnisi municipality spent more amount than allocated from the state budget. At the same time, 79 872 Lari spent in the Poladauri village was not spent as intended.

## Tetrtskaro

Under the ordinance #556 dated 3 September 2008 of the Government of Georgia, the Tetrtskaro municipality was allocated 1 400 000 Lari from the fund of the implementation of projects in the regions of Georgia. Whereas under the ordinance #563 of 8 September it was allocated 5 406 000 Lari.

Contracts on the procurement of works were awarded by the administrative body to Monoliti 21 Ltd and Geokolor Ltd.

In the former military settlement in the Koda village, Tetrtskaro district, 446 apartments, 10 residential and four auxiliary buildings<sup>14</sup> were repaired and prepared for IDPs. Under the contract of 3 September 2008, Monoliti 21 Ltd assumed the obligation to rehabilitate for 1 140 000 Lari the buildings in this settlement for the "aim of using them as housing." According to the contract made between the parties on 13 September 2008, the total cost of the contract increased to 6 276 000 Lari. It is important that unlike other contractors, Monoliti 21 Ltd assumed the obligation to eliminate defects during two years, detected in the works completed by it<sup>15</sup>. On 5 November 2008, the parties drew up a delivery-acceptance act just certifying the completion of works within the timeframe specified in the contract.



The contract does not detail specifications of works to be performed. They are provided in the Defects Acts prepared by Megoplast Ltd and in the bill of quantities of rehabilitation works of buildings, approved by Monoliti 21 Ltd<sup>16</sup> and the Tetrtskaro administrative body. Megoplasti Ltd however had the obligation to draw up cost estimates of works, which also involved not only the preparation of Defects Acts but also estimation of works to be performed.

It is important to note that the combined bills of quantities provided by the administrative body and individual bills of quantities do not tally. For example, the combined bill of quantities does not reflect the spending on sewerage system for five-story buildings #1-5, the buildings #7, #8, #9 and #10.

Separate bills of quantities do not also reflect the cost of installation of drill well. As a result the figures given in the documents do not tally. In particular, according to the combined bill of quantities, the cost of works (excluding the cost of transport, bill of lading, cost of erecting a banner and VAT) made up 4 126

<sup>14</sup> 1. Billet; Building #7;  
2. Billet #8;  
3. Five-storey buildings #1-5;  
4. Headquarters #6;  
5. Hospital #9;  
6. Hotel #10;  
7. Additional 11<sup>th</sup> building;  
8. Additional 12<sup>th</sup> building;  
9. Additional substation;  
10. Additional building of Koda police;  
11. Installation of drill well;  
12. Sewerage system works.

<sup>15</sup> On 26 December 2009, we met with the population of the military settlement in the Koda village of Tetrtskaro district. They told us that for the aim of eliminating the defects, a headman (a person in charge of utilities issues of a building) of each building made up a list of those inhabitants who needed additional works in their apartments. For example, the roof was dripping. As they recounted, after the handover of these lists, certain persons visited them asking to sign written materials and explaining that after this signing the existing defects would be eliminated. It then however transpired that they have signed a written document on the absence of any claims.

According to a headman of the building #2, in total 67 families in the entire settlement needed re-tiling of floors in their bathrooms as water was leaking from drain hole on the floors. By this time, however, repairs were made in 25 families alone by a non-governmental organization and not by an implementer of works.

<sup>16</sup> On 3 September 2008, a contract was signed with Megoplasti Ltd on the procurement of cost estimate documentation.

725 Lari. The total cost, however, comprises 6 276 000 Lari. But the sum of figures given in individual bills of quantities makes up 4 319 912.3 Lari which is less by 1 956 087.7 Lari than the total amount in the combined bill of quantities. The given figures are interesting because they do not include the cost of transport, bill of lading, cost of erecting a banner and VAT and still exceed the data given in the combined bill of quantities by 193 187.3 Lari (the combined - 4 126 725 Lari. Sum of individual bills of quantities - 4 319 912.3 Lari, the difference - 193 187.3 Lari).

In order to clarify the amount of spending by the administrative body, we double-checked the documents certifying the transfer of amounts. According to them the amount transferred to the implementer of works tally with the amount given in the combined bill of quantities - 6 276 000 Lari.

Another contractor, Geokolor Ltd, was to spruce up and paint the facades of buildings, as per contract signed on 7 October 2008. For these works the administrative body was to pay 270 000 Lari. It is important to note that article 2.1 of this contract refers to the ordinance #633 dated 9 September 2008 of the Government of Georgia as the basis for signing this contract. The reference to various ordinances as to grounds for signing contracts is very confusing because the ordinance #633 made changes to the ordinance #563 and the amount to be allocated to the Tetritskaro municipality was defined at 5 406 000 Lari, i.e. both contracts refer to one and the same amount. The provided documents however do not contain cost estimate for painting the buildings or the documents certifying the payment for corresponding service. In reality, the sum of amounts to be paid for both contracts makes up  $6\ 276\ 000 + 270\ 000 = 6\ 546\ 000$  Lari. The inspection of buildings on site made it clear that Geokolor Ltd had performed its contractual obligations<sup>17</sup>.



The meeting with the population made it clear that the Tetritskaro administrative body failed to plan the works properly. In particular, the talks with the inhabitants of the building #2 proved that the roof of the building needed repair as it was leaking. Moreover, the most acute problem for the inhabitants of the building #10 is that the water leaks from the roof right on the electricity meter and despite their repeated requests, neither the meter reader has been relocated nor the roof repaired.

The key problem of individual residential houses is the absence of suction system. Wallpaper and paint are off the walls in almost every unit. Plasterboard partition walls and laminated floors are damaged<sup>18</sup>. Inhabitants face serious problems when using bathrooms because water leaks through the wall of bathrooms into the neighbor's apartments as well as other rooms because drain holes in floors are poorly installed.

The analysis of provided materials allows us to conclude that the works would be performed more efficiently, if the repair of roofs were envisaged in the contracts signed with the implementer of works. Besides, the local administrative body should have treated more seriously the performance of the company after the fulfillment of the contract and applied all the possible measures to enforce the two-year warranty according to which the supplier was obliged to eliminate detected flaws.

## Telavi

The Telavi municipality's administrative body was allocated 489 400 Lari to ensure IDPs with living conditions. On 23 October 2008, a contract was signed with Nova Ltd on the reconstruction of a dormitory. The cost of contract comprised 480 400 Lari. Pursuant to article 4.1 of the contract, "the implementing agency shall perform quality work in accordance with the submitted cost estimates and applicable construction standards, observing the technological cycle." The contract does not specify who should draw up and submit cost estimates. Although with the application #g-04/102-09 dated 22 June 2009, we requested the copies

<sup>17</sup> On 5 November 2008, Geokolor Ltd and Tetritskaro administrative body drew up a delivery-acceptance act on the completion of works within the timeframe specified in the contract.

<sup>18</sup> The damage of plasterboard partition walls was relatively rare. However, this material is used for partitions between the apartments, which does not ensure proper isolated. As regards the laminated floors, they are deformed and some boards may even fall out.

of cost estimate documents in the course of the study, the administrative body failed to provide them.

In regards to the works to be performed, the architecture and infrastructure service of the Telavi municipality's administrative body prepared a defects act on 1 September 2008. The act envisaged the dismantling and repair of a damaged roof, dismantling and repair of partition walls, plastering of walls, installation of cement flooring, covering the floor in kitchens with oilcloth, etc.

The deadline for the completion of the contract was 25 November 2008. By the provided delivery-acceptance act, Nova Ltd handed over the completed works in due time. At the same time, the actual cost of the contract was defined as 489 275, 7 Lari, less by 125 Lari than the contractual cost.



The inspection of the dormitory on site proved that the implementing entity has fulfilled somewhat quality works, although some quality violations were also detected. In particular, the kitchens lack a cement floor and oilcloth is just spread on rough floors.

Although Nova Ltd has repaired the roof, water still leaks, reflecting the low quality of work.

### **Sagarejo**

The Sagarejo municipality was allocated 362 000 Lari. On 9 October 2008, a contract was signed with Nova Ltd on the purchase of repair works to the Autoshool in the city of Sagarejo. The cost of contract comprised 361 987 Lari.

The local administrative body provided a copy of cost estimate prepared by a sole entrepreneur Merab Gorelashvili, specifying the need for the repair of the roof as well as installation of sewerage system, electricity wiring and other main works. According to the cost estimate, the existing holes were to be patched with narrow wall blocs. In total, the cost of works to be performed comprised exactly the amount which the parties envisaged in the contract - 361 987 Lari.

As per article 3.1 of the contract with Nova Ltd, the deadline for the completion of the contract was set on 15 December 2008. The actual completion of works by 12 December was stated in the delivery-acceptance act signed by the parties, which was confirmed by the handover act of completed facilities, drawn up by the Sagarejo municipality's administrative body. The materials also include auditor's opinion<sup>19</sup> of Garant Ltd on the compliance of the works performed by Nova Ltd, which states that the works were done well. Besides, the provided materials contain the invoices of payments. Thus, financial documents were provided in full.

Despite the appropriateness of documents, the inspection of the building on site and the meeting with the inhabitants made it clear that the holes were patched with plasterboard instead of narrow wall blocks. However, we were unable to show it on photos. It also transpired that the implementer of works improved low-quality works performed by it. In particular, a sewerage system was leaking and this problem was eliminated stage by stage. Otherwise, the works are performed in accordance with the conditions specified in the cost estimate.

### **Lahodekhi**

The Government of Georgia allocated 632 200 Lari for the Lagodekhi municipality. This amount was spent by the administrative body on the repairs of the education institution for orphans and children lacking parental care.

On 21 October 2008, a contract was signed between the Lagodekhi municipality's administrative body and Nova Ltd on the performance of design and reconstruction works of the education institution for orphans

<sup>19</sup> Auditor's opinion was produced on 19 November 2008.

and children lacking parental care. The cost of contract comprised 623 173 Lari and the deadline for the completion of works was 25 November 2008.

The materials contain the engineering design prepared by Khurotmodzgvari Ltd, which was commissioned by Nova Ltd. As regards the cost estimate of works, the contract does not envisage the obligation of performing the works in accordance with the cost estimate. The documents, however, include the cost estimate developed by Nova Ltd, which states that the repair of the building requires 633 931,7 Lari. It is important that the cost estimated do not envisage the repair of a sewerage system. The meeting with the inhabitants, however, proved that the problem was the broken sewerage system as water leaked through floors. This indicates that the administrative body failed to properly study and plan the works to be performed.

According to the materials provided by the local administrative body, the compliance of works with the submitted cost estimate was double-checked. According to the opinion prepared by the Levan Samkharauli National Bureau of Forensic Expertise on 25 December 2008, "conducted expertise showed that the cost of construction-repair works performed by Nova Ltd in the Lagodekhi education institution for orphans and children lacking parental care comprised 622 931,7 Lari."

After the inspection of documents and the situation on site, one can conclude that the Lagodekhi municipality failed to properly plan the works and identify the primary needs of the residential building. It is true that the administrative body even conducted the expertise of the completed works to check the final cost, but in terms of efficiency of the performed works, it can be regarded as sufficient because the priority still was the proper development of initial cost estimates and the performance of the activity in accordance with them.

### Kutaisi

The Kutaisi mayor's office was allocated 3 000 000 Lari for the rehabilitation of IDP houses. Similarly to the case with other municipalities, the Kutaisi mayor's office awarded a contract on the repair works of all the three buildings through direct contracting. Under a contract of 19 November 2008, Tegika Universal Ltd assumed the obligation on overhauling the three buildings allocated in the city of Kutaisi.

According to article 5 of the contract, Tegika Universal Ltd was to complete the works envisaged in the project cost estimate until 20 February 2009.

For the delivery-acceptance of the object of the contract, article 6.3 of the contract stipulated



that "the completed works shall be approved by the Kutaisi mayor's office on the basis of the conclusion of an inspection group and the confirmation of the development service of the self-governing city of Kutaisi."

According to materials provided by the Kutaisi mayor's office, the above mentioned requirement of the contract is observed. In particular, the transfers were carried out on 29 November, 11 and 25 December, 2008, and 3 and 20 February, 2009. Several transfers were made onto the account of Tegika Universal Ltd on the above mentioned dates. Each transfer was enclosed with interim acts on the performance of works and reimbursement, bearing the dates, and interim conclusions of inspection group, lacking the dates. According to provided invoices, the

implementer of the works was transferred 2 949 695,2 Lari. Although the documents on transfers are fully presented in the materials, the Kutaisi mayor's office did not provide us with preliminary cost estimate

which would accurately specify the types of works and the amount needed for the repair of all the three buildings.

At a glance it does not seem to be a problem because the architecture service of the Kutaisi mayor's office, on 13 November 2008, drew up the act on actual condition of the three buildings. However, cost estimates dated February 2009 were later presented, saying that "cost estimate was recalculated in accordance with completed works and preliminary cost estimates." But, as mentioned above, preliminary cost estimates were not supplied.

Such "minor" flaws in case of the procurement of works do not go without a negative consequence. For example, the building of a former military lyceum in the Avtomsheni Street, is not properly repaired as the entrance is just painted without any repairs to it and it has no roof.

Besides, the water supply system is out of order in buildings repaired in Kutaisi. In particular, the inhabitants complain about the installed low-quality water taps, leaks from bathtubs and toilet bowls. As a result of poorly performed tiling works in kitchens, tiles have broken off the walls; the door holes are not properly patched.

One cannot speak of overspending or untargeted spending of state funds in case of procurements carried out by the Kutaisi mayor's office, especially given that 3 000 000 Lari was allocated but actual spending comprised 2 949 695,2 Lari, less by 50 304.80 Lari. The spending, however, cannot be considered efficient as the works are not performed properly and the repair works fail to survive one-year depreciation (or use).

P.S. According to the materials provided by the Agency for Procurements, the Kutaisi mayor's office indicated in the progress report of 28 January 2009 on the implementation of the contract that the overhaul of the allocated buildings within the scope of 3 000 000 Lari was financed from the local budget<sup>20</sup>. It is important to note that the State Agency for Procurements did not react to the existing inaccuracy. Even more, the Kutaisi mayor's office supplied a controlling agency with incorrect data even about its expenditure. The column on the information about actually performed work and/or actually rendered service indicates the cost of 3 000 000 Lari whereas according to the documents provided by the mayor's office, the actual spending was less by 50 304.80 Lari than the allocated amount. The quoted facts, unfortunately, prove that a controlling function of the State Agency for Procurements is just a formality and spending entities, therefore, formally submit their reports because the Agency does not study/analyze reports and react to violations.

## Dusheti

The Dusheti municipality's administrative body was allocated 1 752 500 Lari. According to the materials provided by the Ministry of Regional Infrastructure Development, the following measures have been implemented for ensuring IDPs with living conditions in Dusheti:

1. Repairs to Bazaleti sanatorium;
2. Water supply system of Bazaleti sanatorium;
3. Gas supply system of Bazaleti sanatorium;
4. Repairs to building #1;
5. Repairs to building #2.

According to the letter #1167 dated 19 October 2009 of the Dusheti municipality's administrative body, 1 744 947 Lari was spent while the remaining 7 553 Lari was returned to the treasury account.

According to the materials provided to us by the Dusheti municipality, a contract was signed on 10 October 2008, with Comfort 2005 Ltd on the public procurement of construction-repair works of the depreciated residential building #1 of the former trade union located near the Bazaleti village.

Article 2.2 of the contract reads that "works shall be performed in accordance with cost estimates enclosed to the contract. Cost estimates represent an integral part of the contract." However, the contract is not enclosed with cost estimates. The materials include acts on performed works drawn up periodically, the sum of which shows the costs of contract and expenditure of 182 915 Lari.

The contract #195, signed on 19 September 2008 with Stel Kom Ltd is of identical content. However, the subject of the contract is described in very general terms: "The subject of the contract is the procurement of construction-repair works of the Bazaleti sanatorium." Similarly to all other contracts, this contract is not enclosed with cost estimate either. It does not specify the buildings which shall be repaired by the contractor.

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<sup>20</sup> See, the progress report of 28 January 2009 on the implementation of the contract.

Under the contract signed with Comfort 2005 Ltd, the supplier of works was responsible for the performance of repair works of the building #1. Although the contract with Stel Kom Ltd is enclosed with the acts on performed works, only one act makes a general reference to the building. In particular, the act #1 on the performed works, dated 2 October 2008, makes the reference to "Bazaleti sanatorium." The following four acts, however, do not specify the buildings. Thus, it is unclear whether it refers to one building or two buildings as according to the information provided by them, the repair and rehabilitation was made to three buildings. The details on the buildings which the contractor was to repair are not given in the acts on performed works drawn up on 2, 13 and 24 October, 2008. The delivery-acceptance act was signed on 14 November 2008, which states that the amount spent comprised 1 182 349 Lari.

According to paragraph 6.2 of the contract, the control over the delivery-acceptance of works and compliance with the terms of the contract was carried out by a monitoring group set up by the Dusheti municipality and Experti 2008 Ltd. The local administrative body provided us with acts on performed works dated 12 November 2008, which are signed by the director of Comfort 2005 Ltd, head of administrative body of Dusheti municipality and director of Experti 2008 Ltd. A copy of the contract signed with Experti 2008 Ltd was not supplied and it is therefore unclear whether the municipality paid any amount for this service.

The delivery-acceptance act on works was drawn up on 14 November 2008.

Other contractual requirements were observed.

1. On 4 November 2008, a contract was signed with Basa+ 2008 Ltd, on the construction of water supply pipe to the former sanatorium. (It is interesting whether these buildings are located together). The contract is not assigned a number. The cost of contract totals 33 298 Lari.

According to article 2.2 of the contract "Works shall be performed in accordance with cost estimates enclosed to the contract. The cost estimates represent an integral part of the contract." However, the contract is not enclosed with cost estimates.

The acts on the performed work was drawn up on 21 November 2008 and signed by the head of administrative body of the Dusheti municipality, director of Basa +2008 Ltd and director of Experti 2008.

The delivery-acceptance act between the parties was drawn up on 24 November 2008, which states that the cost of works amounted to 33 298 Lari.

2. A contract on public procurement was executed on 10 October 2008, under which Rago Ltd assumed the obligation on the performance of construction-repair works of the depreciated residential building #2 of the former trade union located near the Bazaleti village. The contract is not assigned a number.

According to article 2.2 of the contract "Works shall be performed in accordance with cost estimates enclosed to the contract. The cost estimates represent an integral part of the contract." However, the contract is not enclosed with cost estimates. The total cost of contract made up 182 915 Lari.

The act on the performed work was drawn up on 12 November 2008 and signed by the head of administrative body of the Dusheti municipality, director of Rago Ltd and director of Experti 2008.

According to the delivery-acceptance act drawn up on 14 November 2008, the total cost of works amounted to 182 915 Lari.

3. On 5 November 2008, a contract was signed for the gas supply of the Bazaleti sanatorium. The implementing entity was New Energy Ltd. The cost of contract comprised 140 000 Lari. All the documents are presented in a similar way. According to acts on performed works<sup>21</sup> and a delivery-acceptance act<sup>22</sup>, the cost of performed works comprised 139 300.76 Lari.

By the materials provided by the Dusheti municipality, it is absolutely clear that the contracts on the procurement of works were not drawn up properly by the local administrative body. The provided materials make it impossible to find out whether allocated amounts were spent reasonably and efficiently. No Defects Acts or cost estimates were drawn up until before the acts on performed works. Neither were the copies of documents on transfer of amounts provided.

Finally, according to the letter provided by them, 1 744 947 Lari was spent while according to the documents on transfers the spending comprised 1 734 647, 93 Lari.

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<sup>21</sup> Acts on performed works were drawn up on 20 and 30 November 2008; in total three acts were drawn up.

<sup>22</sup> A delivery-acceptance act was drawn up on 28 November 2008.

### Gardabani

The Gardabani municipality's administrative body was allocated 1 683 000 Lari. The amount was spent on the repair of five and nine-story residential buildings. A contract on the public procurement of works was signed with Dagi Ltd with the total value of 1 662 438 Lari. The cost estimate documents were prepared by the Levan Samkharauli National Bureau of Forensic Expertise. The Gardabani municipality paid 9 866.6 Lari for the service rendered by the Bureau. Besides, before the commencement of repair works, the local administrative body signed a contract with Territorial Development Agency Tbilkalakproekti Ltd for the preparation of a conclusion on the construction firmness of the residential houses. The cost of contract comprised 2 000 Lari. For the development of design and cost estimate documents for construction works, a contract was signed with Teknoterm Ltd. The cost of contract was 500 Lari.

The Gardabani administrative body signed a contract with the physical person, Teimuraz Mchedlidze, on the supervision of the works performed by the supplier of works. The cost of this service was defined as 8 194.7 Lari in the contract.

The Gardabani municipality provided the act of the inspection conducted by the Chamber of Control, saying that the contracts signed by the local administrative body with the supplier did not comply with the requirements of the regulation on public procurements and did not envisage the rules for the delivery-acceptance of works and the guarantee for the execution of the contract.

The act of the Chamber of Control stated that a delivery-acceptance act on the performance of rehabilitation-repair works of the former dormitory was not drawn up between the local administrative body and Dagi Ltd, which constituted the breach of paragraph 4, article 26 of the regulation on procurements<sup>23</sup>. The Chamber of Control emphasized the breach of paragraphs 1, 3 and 5, article 27 of the regulation on public procurements<sup>24</sup>, because the local administrative body failed to apply the mechanism of obligatory guarantees or insurance to ensure the implementation of the contract.

### Khashuri

The Khasuri municipality's administrative body was allocated 2 602 700 Lari. According to the letter of 16 March 2009 sent by the local administrative body, the documents certifying the spending of amounts allocated for the assistance of IDPs could not be provided as they had been withdrawn by the Shida Kartli and Mtskheta-Mtianeti prosecutor's office.

To study the issue more thoroughly, we sent an additional application to the local administrative body on 19 September, requesting the copies of these documents in case they had been returned by the Shida Kartli and Mtskheta-Mtianeti territorial prosecutor's office. On 8 October 2009 an administrative complaint was filed due to the failure of the administrative body to provide the response.

On 16 October 2009, the Khasuri administrative body supplied us with the materials, the analysis of which will be provided below.

The contract #289 was signed with Arte Ltd on 16 September 2008. The subject of the contract was the procurement of repair works for four facilities in the city of Khasuri and town of Surami. The procurement was to be conducted in accordance with the cost estimates drawn up by the Arte Ltd itself.

The cost of contract was set at 1 632 700 Lari, while the delivery-acceptance acts signed by the parties was to certify the fulfillment of obligations. Article 12 of the contract sets forth the terms of inspection of works, but the provisions are too general, authorizing (rather than obliging) the administrative body to control the progress of the contract and does not specify a particular person who would be responsible for the performance of this function.

According to the provided cost estimates, the repair works of four facilities included 15 buildings. The materials contain preliminary cost estimates as well as cost estimates of performed works in two stages. The drawn up cost estimates do not bear date. However, the buildings and their costs look as follow:

<sup>23</sup> See, act #64/00 of the Chamber of Control of Georgia "on the unplanned, thematic, field audit to study the expediency of spending of budgetary means allocated between 7 August 2008 and 1 March 2009 to the Gardabani municipality for measures to ensure compact settlement and living conditions to people displaced due to military actions against Georgia in August 2008." p. 8

<sup>24</sup> Ibid, p. 5.

#	<b>Building</b>	<b>Initial cost in Lari</b>	<b>Cost of performed works 1 in Lari</b>	<b>Cost of performed works 2 in Lari</b>
1.	Town of Surami, cottage #1	15527.25	9068.82	6458.42
2.	Town of Surami, cottages #2, 3, 4, 5 and 14	55246.30	27662.81	27583.50
3.	Town of Surami, cottage #6	10748.28	5172.53	5575.75
4.	Town of Surami, cottages #7, 8, 9 and 10	50798.86	26738.98	24059.87
5.	Town of Surami, cottages #11 and 12	24873.95	13106.75	11767.20
6.	Town of Surami, cottage #13	17011.09	9041.75	7969.34
7.	Town of Surami, cottage #15	11672.67	3176.52	5496.15
8.	Town of Surami, cottage #16	14107.20	7657.20	6450.00
9.	Town of Surami, Poladi Hotel	175661.04	40542.64	135118.39
10.	Town of Surami, Poladi Hotel, medical station #1	29832.96	7738.21	22094.76
11.	Town of Surami, Poladi Hotel, medical station #2	24041.37	6802.93	17238.34
12.	Town of Surami, Surami Hotel	348609.37	162007.53	186601.84
13.	Town of Surami, Surami Hotel, 16 cottages, medical station #1, medical station #2 and outer sewerage and water supply systems of Poladi Hotel.	85430.66		85430.66
14.	Town of Surami, vocational educational institution	464333.67	127725.14	336608.53
15.	City of Khashuri, kindergarten	304805.42	78897.34	225908.09
<b>16.</b>	<b>Total</b>	<b>1632700.09</b>	<b>525339.15</b>	<b>1104360.84</b>

The materials include a note on the cost of performed works, which does not have a date and is signed by the director of Artes Ltd alone, however, it is not clear who is the other signatory i.e. who accepted the works, because the title of the mentioned person is not indicated in the act and the signature is so vague that makes it impossible to identify the person. By the above mentioned note, the cost of preliminary cost estimate and performed works, in accordance with the presented invoices, is identical - 1 632 700 Lari.

On 19 September 2008, the Khashuri municipality's administrative body signed a contract #296 with Architector Ltd on the development of cost estimate documents for the repair works of the former vocational educational institution #109 in the Stalin street in the city of Khashuri. The cost of the object of procurement was set at 2 000 Lari. On 6 November and 26 December 2008, the contracts #332 and #400, respectively, were signed with the same contractor, Architector Ltd, on the development of cost estimate for the repair works of the kindergarten #3 in the city of Khashuri as well as for additional repair works of the former vocational educational institution #109. The cost of both contracts comprised 506 Lari.

On 22 September 2008, M.G. Tbilisi Ltd was awarded the contract #287 on the procurement of repair works of the former vocational educational institution #109 in the city of Khashuri, with the total value of 888 000 Lari. The deadline for the completion of the contract was 1 December 2008. The Defects Acts were drawn up by the economic and infrastructure development service of the Khashuri administrative body on 18 September 2008; the preliminary cost estimate was drawn up on 22 September 2008, according to which the repair to the building required 890 000,31 Lari. The case materials, however, contain the cost estimate of completed works, dated 29 December 2008, which specify that the total cost of works comprised 887 882,79 Lari. The preparation of the cost estimate of performed works after the expiry of the term of contract can be explained by the agreement #49/297 signed between the parties on 28 November 2008, which extended the deadline for the completion of the contract until 31 December 2008. According to the invoice provided by the local administrative body, 887 882,79 Lari was paid on 29 December to the implementer of the works. On 26 December 2008 the contract #402 was signed on additional repair works to the same building. The cost of additional works was estimated at 48 430 Lari. The works were to be completed by 31 December. Additional works envisaged the installation of MDF type doors, plasterboard plates over the door holes and painting of

doors with water paint. In total, 170 doors were to be handled. According to the act on the performed works, the spending comprised 48 429,74 Lari, which is proved by the tax invoice drawn up on 31 December.

On 7 December 2008, a contract #335 was signed with Atlanta Ltd on the procurement of repair works of the kindergarten #3 in the city of Khashuri. The cost of the object of procurement was set at 26 391 Lari. The deadline for the completion of the contract was set on 31 December 2008. A defects act is drawn up on 7 October. A preliminary cost estimate was prepared on 7 November, estimating the cost of works at 26 570,28 Lari. The works envisaged the installation of partition walls in the building, metal-plastic windows and doors, etc. Acts on the performance of works were signed on 17 November and 15 December by the local administrative body and Atlanta Ltd. On the same dates the payment of 26 017, 82 Lari was made for the completed works.

On 22 April 2009, the local administrative body signed the contract #185 with Elektron+2006 Ltd. The contractor assumed the obligation to rehabilitate the water supply system to the kindergarten #3 and pumping station building. The cost of contract comprised 2 926 Lari, while the deadline for the completion was 29 March 2009. The cost estimate for the above mentioned works was prepared by the supplier of works, Elektron+2006 Ltd. The cost estimate of performed works was drawn up on 26 March 2009, putting the cost at 2 868,93 Lari, which was certified by the tax invoice drawn up on 29 April 2009.

The study of provided documents showed that the actual spending made up 2 600 405,28 Lari, which is less by 2 294,71 Lari than the allocated amount.

## Oni

By the ordinance #563 dated 8 September 2008, the Oni municipality was allocated 1 541 000 Lari. By the ordinance #225 dated 24 March 2009, 100 000 Lari was allocated from the reserve fund of the Government of Georgia, however, this amount was decreased to 67 200 Lari under the ordinance of 9 December 2009.

For the aim of carrying out the control over the spending of allocated amounts, a commission was set up under the ordinance #67, dated 18 August 2008, of the head of local administrative body. According to the protocol produced by the commission on 29 August 2008, the total of 1 641 000 Lari was needed to compensate the damages. By the ordinance #653 dated 8 September 2008 of the Government of Georgia, the Oni municipality was allocated 1 641 000 Lari, i.e. less by 100 000 Lari. However, by the ordinance #255 dated 24 March 2009 of the Government of Georgia, the Ministry of Finance of Georgia allocated 100 000 Lari from the reserve fund for the aim of compensating damages and funding the repair-rehabilitation works of multi-apartment residential houses of the population who suffered from the military actions. This sum was to top up the first allocation in order to reach the amount which was specified by the commission as necessary for the compensation of damages.

According to the protocol drawn up by the commission, part of the roof of the five-apartment building at 15 Demetre II Street was to be repaired first. The cost of this work was estimated at 6000 Lari. The protocol of 1 October 2008, clarified that there was the need of repairing the entire roof and carrying out internal repair works in the building, although the cost of these works was not estimated. Finally, pursuant to the contracts signed with JSC Sakshakhtmsheni (Oni Ltd) and sole entrepreneur Merab Grdzelishvili<sup>25</sup>, the cost of the provided contracts made up 28 474 Lari (16 269 Lari – the repair of the roof and 12 205 Lari – internal repair works). According to the documents on the transfers, provided in the materials, Oni Ltd was transferred 15 122 Lari on 18 December and the sole entrepreneur Merab Grdzelishvili was transferred 10 343, 10 Lari on 19 November for the performed works. It is important to note that the local administrative body signed the contract on internal repair works first, on 29 September, and then, on 2 December, the contract on the repair of the roof, which is a proof of an improper planning of the works.

Oni Ltd also repaired the building at 4 Arno Oneli Street. External and internal repairs to this building cost 135 656 Lari, in total. The contracts were executed with Oni Ltd on 9 September 2008 and Piramida Ltd on 14 November 2008. According to the contract, Oni Ltd was to perform the works worth of 125 567 Lari. However, the study of documents on transfers revealed that Oni Ltd was paid only 68 888,50 Lari for the performed works. The interim acts on performed works of Oni Ltd, provided with the materials, and the transfer do tally with them. As regards the completion of works, an act on the performance of works was drawn up on 20 October and the delivery-acceptance act on 27 October, certifying the completion of works, and the contractor was transferred 56 677,05 Lari on 21 October. Therefore, the total actual cost of works performed at 4 Oneli Arno Street made up 125 565,55 Lari.

One more contract was awarded by the Oni municipality to Oni Ltd on 23 October 2008, on the construction

<sup>25</sup> The contract #91 dated 2 December 2008 and the contract #69 dated 26 September 2009.

of three individual houses. The cost of contract was 89 397 Lari. According to the documents on transfers, provided with the materials, on 15 October 2008, the local administrative body transferred to Oni Ltd 40 500 Lari on the basis of submitted bank guarantee. Besides, the parties drew up a delivery-acceptance act on 30 October 2008, according to which the contractor completed the construction of two houses. There is a discrepancy between the amounts shown in the document on transfer and the invoice dated 27 October (40 500 Lari in the transfer document and 59 598 Lari in the invoice). JSC Sakshakhtmsheni (Oni Ltd) was paid 29 799 Lari on 19 November 2008. On the same date, the act on the completion of the construction was drawn up and signed by the members of the commission. With the invoice, dated 7 November, the implementer of the works certified that it received 29 780,80 Lari for the completion of the mentioned work (the construction of one residential house).

The local administrative body transferred 230 066,35 Lari to Oni Ltd for all the performed works.

As mentioned above, according to the contract #85 signed with the Piramida Ltd on 14 November 2008, the implementer of works was to carry out internal repair to the damaged part of the house at 4 Arno Oneli Street. Internal works were specified in the cost estimate enclosed to the contract, which included the replacement of the damaged floor in the kitchen and gallery, plastering of walls and ceiling and the performance of other types of work. The works cost 10 088,66 Lari in total. On the same date, the contract #86 was signed following which Piramida Ltd assumed the obligation to arrange and fence the yard of a new settlement in the city of Oni. The cost of these works was set at 16 186 Lari. Acts on the performance of works were signed on 18 November and 19 December. The transfers were made on the same dates as well, comprising 26 059,84 Lari, less by 214,84 Lari than the amount envisaged in the contract.

It is important to note that none of the acts of the set-up special commission refers to the issue of the construction works for a new settlement (the former motor car station territory). According to the materials provided to us the cost of these works comprised 64 332 Lari in total. These amounts included the preparation of cost estimate and the installation of outdoor lighting, outer sewerage system and water supply system. According to the contract #84, dated 3 November 2008, "the utilities department" carried out outdoor lighting works and was transferred 5 394 Lari for these works on 19 November 2008. Under the contract #83, dated 29 November 2008, the individual entrepreneur Archil Maghaldadze assumed the obligation on the preparation of cost estimates for outdoor lighting works and development of the territory. The contract of an identical content was signed with the same sole entrepreneur on the preparation of cost estimates for the repairs to the apartments at 17 Dgvareli Street and 15 Demetre II Street. The provided materials contain the payment order of 14 November 2008, which certifies the transfer of 1 706 Lari. In addition, according to the contract #78 of 17 October 2008, Archil Magaldadze was to prepare the cost estimate of works for the installation of outer sewerage and water supply systems. The cost of works was set at 1 231 Lari. The acts on the performance of works refer to the preparation of the cost estimate for the development of the territory for new settlement alone. Documents on the performance of other works were not provided.

As regards the performance of works concerning the outer sewerage and water supply systems on the above mentioned territory, this obligation was assumed by Rachmsheni Ltd under the contract #79 signed on 20 October 2008. According to the cost estimate prepared by the sole entrepreneur Archil Maghaldadze, the performance of works required 41 046,60 Lari. The first transfer of 12 313 Lari was made on 23 October on the basis of a bank guarantee issued by the Vest insurance company on 21 October. The second transfer was made on the basis of a letter submitted by the director of Rachmsheni Ltd requesting the reimbursement of the performed works. On the same date, 21 430,20 Lari was transferred. The act on a proper performance of works was drawn up on 21 November (the deadline for the completion of the contract was 20 November – one month), the final payment to the contractor was made on 24 December through the transfer of 7 302,78 Lari. In total, the sum transferred to Rachmsheni Ltd made up 41 045,98 Lari.

As regards the building at 17 Dgvareli Street, the act of the commission determined that it needed repair works of the roof worth of 60 000 Lari. According to the contract the repair works of the roof cost 56 187 Lari while the preparation of cost estimate documents, involving not only the cost estimate for repairs at 17 Dgvareli Street but also for the rehabilitation of water supply system of the building at 15 Demetre II Street and four schools, cost 3 940 Lari. The obligation to repair the roof within 45 days was assumed by the Onmsheni Ltd. According to the provided materials, the amounts for the performance of works were transferred in two stages: 16 650 Lari on 1 October<sup>26</sup> and 38 957,28 Lari on 5 November. In total, 55 607,28 Lari was transferred, less by 579,72 Lari than envisaged in the contract.

The cost of construction works of the five-apartment house at 2 Arno Oneli Street was set at 410 000 Lari, while the cost estimate for these works at 17 000 Lari; thus the total cost of the repair of the above mentioned facility comprised 427 000 Lari. Under the additional agreement signed on 3 November 2008, 8 289,49 Lari

<sup>26</sup> The contract was executed on 26 September 2008.

was allocated for unforeseen works and finally, the total cost made up 435 289 Lari. In a preliminary act submitted by the commission the cost was estimated at 500 000 Lari. The cost estimate documents were prepared by Khuro Ltd according to the contract #60 dated 10 September 2008 and this company was transferred the above mentioned amount on 22 September 2008, on the basis of the delivery-acceptance act drawn up on 15 September.

The obligation to construct five-apartment house at 2 Arno Oneli Street was assumed by Iberia 21 Ltd under the contract #63 dated 15 September 2008<sup>27</sup>. The amount was transferred to Iberia 21 Ltd in three stages: 22 September - 205 000 Lari, on 20 October - 108 000 Lari and on 22 December - 105 270,29 Lari. In total, 418 270,29 Lari was transferred. The act on the completion of the construction of the house was signed on 22 December.

According to the contract #80 signed on 22 October 2008 with the individual entrepreneur Mamuka Metreveli, the implementer of works was to build three individual houses with the total value of 89 397 Lari until 28 November<sup>28</sup>. However, according to the materials on the performed works and documents on the transfer of amounts, the local administrative body paid 89 373 Lari for the construction of three houses.

Under the contract #83 signed on 23 October 2008, the sole entrepreneur Merab Grdzelishvili assumed the obligation of constructing two individual houses by 15 November. According to the transfers made on 30 October and 23 December, 59 580 Lari was paid for the performed works. The performance of works was certified by the act on the completion of the residential house, drawn up on 22 December.

Under the contract #74 signed on 13 October 2008, the individual entrepreneur Archil Gavashelishvili assumed the obligation of constructing two individual houses by 17 November. However this deadline was postponed until 28 November through the agreement signed by the parties on 17 November. Acts on the performance of works were drawn up on 22 December while the transfer of amounts was made in three stages: 17 October - 22 028 Lari; 5 November - 22 029 Lari and 23 December - 15 521,34 Lari, which made up the total of 59 578,34 Lari.

Under the contract #66, dated 22 September 2008, Poni Ltd assumed the obligation to build four individual houses until 15 November. The cost of contract was estimated at 99 512 Lari. On 23 October 2008 the parties reached an agreement on the construction of six individual wooden and four block houses instead of four houses as initially envisaged. The increase in the volume of works caused the increase in the price up to 268 464 Lari of which 149 268 Lari was for wooden cottages and 119 196 Lari for block cottages. The provided materials do not contain any document which would explain the need for the increase in the number of residential houses. This is not indicated in an agreement signed regarding the change in the contract. The amounts were paid for the performance of works in three stages: 6 November - 99 512 Lari; 27 November - 49 750 Lari and 26 December - 119 160 Lari; the total - 268 422 Lari.

It is important to note that 17 individual houses were built in Oni for the people who suffered damages, and the actual spending for the construction comprised 476 953 Lari. This amount is less just by 58 683,05 Lari than the amount spent for the construction of five-apartment building at 2 Arno Oneli Street. Thus, the analyzed materials provide the ground to conclude that the spending was untargeted.

The special commission identified the number of people having suffered damages, whose living spaces needed to replace the glass in the window frames. Under the contract #81, dated 23 October 2008, the individual entrepreneur Ramaz Samkharadze assumed the obligation of carrying out the works. The local administrative body was to pay 14 000 Lari for new window panes with 1000 m<sup>2</sup> glass within 10 days. In this regard, the commission drew up two acts on 29 October and 12 November. According to the second act, it was clarified that the amount of glass needed comprised 964 m<sup>2</sup>. It also noted that the list of people and organizations were attached to the act, although the provided materials did not contain this list, thus preventing us from defining the actual amount of performed works. The act on performed works was drawn up on 29 October. By the letter of 5 October, the individual entrepreneur Ramaz Samkharadze notified the administrative body that 964 m<sup>2</sup> of the glass was used for replacing the window panes. Only one document, dated 29 October, certifying the transfer of money was provided, showing the transfer of 6 496 Lari.

As mentioned above, by the act of 28 August 2008, the commission identified the damage worth of 1 641 000 Lari, but by the ordinance #563 the government allocated 100 000 Lari less amount. Thereafter, by the decision of the government of Georgia again<sup>29</sup>, this shortage was funded from the reserve fund of the government. In

<sup>27</sup> The above mentioned agreement on the allocation of additional amounts for unforeseen works was signed on 3 November 2008 in the form of an additional contract.

<sup>28</sup> According to the agreement signed by the parties on 17 November 2008, the deadline for the completion of the contract was postponed until this very date.

<sup>29</sup> Ordinance #225 dated 24 March 2009.

this regard, the information concerning particular grounds for the decision on allocating additional funds was requested from the government of Georgia as well as the finance ministry. The letter #04-03/14024 from the finance ministry, dated 15 October 2009, informed us that the ground for the issuance of the ordinance was the letter #05-144 of 3 April 2009 from the Oni municipality, requesting additional funding for the compensation of damages and funding the repair and rehabilitation works of multi-apartment residential houses. Despite repeated applications for the documents certifying the expenditure of the above mentioned amounts, the response was not received and the case is now under the court consideration.

The above facts illustrate that the provided materials do not allow getting a complete and accurate answer to the question as to whether the allocated amounts were spent efficiently. The materials are incomplete and the provided materials do not include the documents required to determine the efficiency of the decisions.

### Kareli

The money allocated to the Kareli municipality's administrative body comprised 2 225 900 Lari. It is important to note that in the process of requesting the documents on spending we had to submit an administrative complaint and it was only after the complaint that we received the letter #475 of 13 November 2009.

By the provided information we were told that "the degree of damage to buildings was determined by the construction organization. Thus, the Kareli municipality's administrative body does not have any document certifying the pricing".

The provided response makes it clear that requirements of the law were not observed in the spending of allocated amounts and the study of documents will make it impossible to find out how efficiently were the mentioned means spent.



On 25 August 2008, the contracts #149 and #146 were signed with Nova Ltd which was to carry out the construction and rehabilitation works of residential houses of Natalia Chkhikvadze and Davit Samsonashvili, residents of Ukanubani in the Urnisi village. The cost of the first contract was 160 229 Lari and the second contract 117 703 Lari. The deadlines for the completion and delivery of works were 10 and 25 November 2008, respectively. The completion of works should be certified, as per article 6 of the contract, by the delivery-acceptance act. The mentioned article also envisaged a preliminary inspection of works by the head of Kareli municipality's administrative body in agreement with the inspection group.



Below you can see the photos of Natalia Chkhikvadze's house.

The house in the photo was built by the above mentioned construction company. When inspecting the house one can clearly see the quality of the performed works. The interview with the family members revealed that the tiling on the balcony was performed very poorly and the owners had to make it again, the tiles in the bathroom was purchased and made by the owner herself. It is noteworthy that the owner of the house was not aware of how much the construction of her house cost. Besides, the delivery-acceptance act was not signed by her.

Under the contract signed on 3 October 2008, Nova Ltd assumed the obligation to repair damaged houses of the population. The contract envisaged the repair of windows, gates and roofs of six houses. The total cost of the contract was 84 369 Lari. Besides, article 1 of the contract states that the

repairs shall be performed in accordance with the enclosed cost estimates. However, the above mentioned letter from the administrative body proved that such cost estimates were not submitted and it is therefore impossible to define what was the cost of the works to be performed and if the needs of the population were met.

We inspected the house of Perene Kutkhashvili, a resident of Ukanubani. Under the contract, this house required the works worth of 9 388 Lari. In particular, the repair of roof and windows, the installation of the gate. The Kuthkhashvili family members told us that the implementers of works were initially requiring from owners to pay for the labor of workers. As this requirement was rejected, the damaged part of the house was repaired but not completely, some of the windows were not repaired. Similarly to other cases, the owners were unaware of the cost of the works. Neither was the delivery-acceptance act drawn up with them.

The photos illustrate that three windows were repaired though not completely and the gate was replaced. Given that there are no Defects Acts nor cost estimates, the comparison of which would have allowed us to judge the efficiency and legitimacy of spending, it is impossible to find out whether the implementer of works carried out the works which were 9 388 Lari worth.

The situation is identical in regards to the works to be performed by Nova Ltd in Tsinaubani. The contractor was to repair the house of Goderdzi Ghviniashvili by 20 October 2008. The cost of works was estimated at 83 980 Lari<sup>30</sup>.

On 2 December 2008, the parties signed the final delivery-acceptance act by which the commissioner of the works, the Kareli municipality's administrative body, certified the performance of works with the total value of 446 281 Lari.

Another contractor which was awarded contracts by the Kareli administrative body was Artes Ltd.



The contract was signed on 16 September with the cost of 1 485 900 Lari. The contractor was to repair four buildings: learning building #1 of the professional educational centre (three stories); 2. learning building #2 of the professional educational centre (four stories); 3. learning building of the polytechnic educational institution (three stories); 4. dormitory of the polytechnic educational institution (four stories). The deadline for the completion of works was 1 December 2008. Although the deadline for the completion was set on 1 December, the delivery-acceptance act was drawn up by the parties on 17 November.



First it would be noted that it is impossible to judge the legality and efficiency of spending because the Kareli municipality does not have all the documents which would allow us to judge the above mentioned. By inspecting the

buildings on site we tried to find out whether the IDPs were ensured with elementary living conditions.

The photos below illustrate that the works were not performed well. The situation existing in the buildings of the professional educational centre proved the low quality of repairs. Windows were not replaced, new flooring was not made; wooden floor and parquet floor were painted identically with paint. Roof was not repaired, facade not plastered and painted, etc.

The situation in the polytechnic educational institution was relatively better and the inhabitants did not complain about some major problems.

<sup>30</sup> The contract was signed on 3 October 2008.



Five contracts signed with Aliansi Ltd are absolutely ambiguous as well as the subjects of all the five contracts: "rehabilitation of apartments of the population in the Karel district, who have suffered damages due to military actions."

None of the contracts is enclosed with the list of the population as well as the documents identifying the damage and estimated cost.

#	Date of contract	Date of completion	Cost in Lari
1.	#170; October 17, 2008	31 December 2008	100 000
2.	#175; October 22, 2008	31 December 2008	200 000
3.	#187; November 13, 2008	31 December 2008	300 000
4.	#219; December 9, 2008	31 December 2008	250 000
5.	#225; December 19, 2008	31 December 2008	180 000

The reason why five contracts were executed with one and the same contractor on one and the same subject, on the performance of works during one and the same period is absolutely unclear. The total cost of all the contracts made up 1 030 000 Lari. The only document which enabled to identify what measures were carried out by the contractor was the delivery-acceptance act of 18 February 2009.

The document notes that Aliansi Ltd rehabilitated eight houses in the Knolevi village, nine houses in the Avlevi village, and four houses in the Dzlevijvari village. It also notes that the contractor performed the works worth of 1 800 000 Lari. The provided contracts, however, show that Aliansi Ltd performed works of the total value of 1 030 000 Lari.

According to the materials provided by the local administrative body, 2 958 371 Lari was spent by the local administrative body, i.e. more by 732 471 Lari than the amount allocated from the budget.

## V. CONCLUSION

This study describes the activities carried out within the scope of international assistance allocated for ensuring people who were displaced or suffered damaged due to the military actions of August 2008, and provides the public with a general picture of how were the mentioned funds spent, according which principles and legal grounds.

The tenders, conducted in 2009 in Georgia, represent one of major procurements given the size of financial allocations. The social importance of the public procurement is determined by the circle of beneficiaries; these financial resources were allocated for the rehabilitation of their houses.

The place for the delivery of works was the entire territory of Georgia and the construction works were carried out in every city and municipality where refugees live. The expectation, therefore, was that the supplier of public procurement would be local companies.

The interest and activity of construction companies towards tenders was rather high and their number, in the end, reached 101. It should however be noted that the activity was high in case of the first 20 announced tenders whereas afterwards the interest decreased to minimal level and only two or three companies submitted bids for the tenders. These were mainly the companies which succeeded in previous tenders and were awarded contracts on public procurement. The reason, in our view, was imperfect qualification requirements, unfair competition and administrative barriers. As a result only 26 companies were awarded contracts through tenders.

It is very important to note that out of 85 tendered procurements almost half – 34, were won by two companies. Accordingly, these two companies accounted for almost half of state expenditures through tendered procurements (37 400 000 Lari).

The analysis of financial resources administered through tendered procurement reveals a general trend which proves once again the existence of above described and substantiated problems in procurements. Summing all successful bids together, GYLA found that they were only 64% of the cost estimate provided by the government. This low ratio signifies that companies were providing unrealistic bids in order to win the contract. In particular:

- Proposals submitted by companies were selected, evaluated and their competitiveness established only by one priority coefficient – the price. The companies were therefore motivated to offer unreasonably low prices to gain advantage over others;
- Other possibilities and resources associated with the companies, which could have been applied to compare the companies and reveal the best one, were translated into qualification requirements. Instead of assessing these resources by the priority coefficient and thus selecting better proposals, high qualification requirements were established and the companies were not compared on this basis. Moreover, they turned into an administrative barrier.

Most contracts were later amended to increase the cost of the contract. The parties make references to added volumes of work as the grounds for the changes. The financial analysis proved that the cost specified in tender proposals increased by 27 percent in total. The size of the increase is unjustified in fiscal terms and clearly indicates to two negative aspects of the public procurement:

1. No doubt that public procurement was prepared poorly and superficially, with an engineering design and cost-estimate documentation being with flaws and incomplete. Therefore, a purchaser had no longer the true information on financial amount of works to be performed;
2. High increase in costs of contracts later on, almost entirely ruled out and neglected the content and principles of competitiveness of tender in fiscal terms.

One more form of procurement envisaged by the law on public procurements – direct contracting, represents the means of procurement to be used in exceptional cases. If it is used regularly, it will be the best possibility of the so called “legal corruption.”

What do we mean by making this conclusion? A purchaser during the procurement of services or work through direct contracting is not obliged to:

- substantiate the basis for the selection of the supplier of works;
- have the information whether the work is performed by the contractor itself or subcontractors;
- sign an agreement on material changes to a contract<sup>31</sup> (or vice versa, make a substantial change to a contract through agreement, which is not allowed in case of the procurement through competitive bidding).

The absence of the above listed obligations produces a negative result during the implementation of a specific activity. In particular:

- municipalities signed various procurement contracts on one and the same works;
- municipalities were absolutely unaware of the information whether the works were performed by a contractor or a subcontractor;
- the criteria for the selection of a supplier of works are absolutely unclear.

The indicated third issue is especially problematic as it is connected with the issues of legal person suppliers of work and conflicts of interest which, during the study, was impossible to scrutinize on the legal level. From

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<sup>31</sup> We mean that the purchaser has a possibility to sign a contract on a new procurement on the same object of procurement with different terms and thus spare the supplier from the obligation of paying the penalty.

20 March 2007<sup>32</sup> to 31 December 2009<sup>33</sup>, the information on the founders of legal persons was not public according to the decree of the finance minister of Georgia, which actually made it useless the provision in article 8 of the law on public procurement concerning the terms and rules for avoiding the conflict of interest.

It has been left beyond the public control whether within this period, the agencies implementing state procurements signed contracts, through direct contracting, with such persons with whom they shared direct or indirect economic interest. Or whether persons who were family members of representatives of procuring organizations participated in the procurement preparation procedure or directly in procurements<sup>34</sup>.

Spending by municipalities in excess to allocated funds, the certifying documents of which were not completely provided by the municipalities, should be evaluated as a problem.

One of the reasons of low efficiency is the advance payment of the total cost of works on the basis of submitted guarantees, as the "sanctions" envisaged by the contracts for the incomplete performance of works were not applied in any of the cases. Moreover, none of the contracts signed by the MDF with the contractors envisages the application of the guarantee mechanism, although rather significant amounts were transferred in advance.

The subject of a contract is too general, giving the parties excess freedom in action, which is against the principles of public procurement.

Cost estimates enclosed to contracts lack dates, which makes it impossible to check whether they were drawn up before or after the execution of contracts. This suspicion is reinforced by the fact that Defects Acts, as a rule, were drawn up 2-5 days prior to the execution of contracts and this amount of days is not a reasonable period for the development of cost estimates.

In several cases the Defects Acts and cost estimates enclosed to the contracts do not tally.

It is actually impossible to check the spending on the rehabilitation of damaged (private) houses for it is impossible to identify the performed works by any sign (address or subject).

A significant discrepancy is observed between the quality of works and terms of contract. This is even more complicated by the fact that none of the local administrative bodies applied the provision envisaged by the contract regarding the obligation of a contractor to improve its low-quality performance by its own means.

Contracts do not envisage the requirements provided in subparagraph (d), paragraph 4, article 25 of the regulation on public procurements regarding the compliance of performed works with the established standard. The reference to the standard in contracts is chiefly of a formal nature.

In many cases a one year guarantee term set in contracts for the improvement of flaws in performed works were not fulfilled.

All the above said provides us with the ground to conclude that although a huge amount of works were performed, a number of violations of legal requirements and improper fulfillment of contractual obligations were observed in this process, which in the end, resulted in a low quality of performed works.

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<sup>32</sup> The decree #233, dated 20 March 2007, of the Minister of Finance of Georgia "On the approval of the instruction on the rule for state and/or tax registration of physical and legal persons, their affiliates (or representative offices) and other taxpayers."

<sup>33</sup> The decree #957, dated 31 December 2009, of the Minister of Finance of Georgia "On the approval of the instruction on the rule for tax registration of taxpayers."

<sup>34</sup> This remark refers to public procurement through direct contracting. We shall here emphasize a negative amendment to article 8 of the Law on Public Procurements made on 20 November 2009, following which the conflict of interest shall not apply to participants in the negotiations on procurement through direct contracting from 1 September 2010.

## VI. ANNEXES

### 1. Brief overview of each tender conducted by the MDF

#### Tender Package No SB/IDP/CW/01-2009

##### **Object of Tender – Procurement of repair-reconstruction works for IDP houses in Telavi, Gurjaani and Sagarejo Districts**

Brief description:

The tender announcement and the tender documentation were approved on 8 January 2009. It should be noted that a number of such requirements which do not directly serve the aim of the Law of Georgia on Public Procurement and represent some sort of administrative barriers were defined as qualifying requirements. On 16 January, an amendment to the text of announcement was approved, eliminating certain incompliance. The following qualifying requirements were approved:

a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. It should also be noted that if the turnover of a firm comprised 1 000 000 Lari during a year and it was set up, for example, two years ago, it could not participate in the tender. We think, this barrier was unjustified and restricted free competition.

It is also worth mentioning that one of qualifying requirements to companies was the turnover of 1 000 000 Lari per year over the past three years, which means that if a company had a turnover of 5 000 000 Lari per year over the past two years, it would not be able to participate in the tender.

b) Information on the qualification of a bidding company's personnel, including the requirement that a project manager shall have at least 10-year experience of working in the projects of similar type. It should be noted that the legislation concerning construction does not provide for such restrictions for allowing access of a person to construction works and determining its qualification. As regards fiscal benefit, one can hardly imagine a fiscal motive for the refusal to a bidding company offering a low price because its manager has, say, 8-year experience of performing similar works.

According to the approved tender documentation, a tender proposal was evaluated by **two criteria: price of a proposal and work experience over the last five years. The priority coefficient on price was set at 0,8 and on work experience – 0,2.**

The procurement was offered in three lots.

Lot 1 – Telavi rehabilitation works.

Lot 2 – Sagarejo rehabilitation works.

Lot 3 – Gurjaani/Bakurtsikhe rehabilitation works.

Twenty-five companies participated in the tender of which 13 were disqualified due to qualification requirements. They offered the following prices:

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|---|---|
| 1. Axis Ltd<br>Lot N1 – 989156 Lari<br>Lot N2 – 491833 Lari<br>Lot N3 – 786967 Lari               | 4. Nova Ltd<br>Lot N1 – 1025032 Lari<br>Lot N2 – 468730 Lari<br>Lot N3 – 804753 Lari      |
| 2. Center Point Group Ltd<br>Lot N1 – 997385 Lari<br>Lot N2 – 476079 Lari<br>Lot N3 – 792491 Lari | 5. Erisimedi Ltd<br>Lot N3 – 815882 Lari  |
| 3. Erkeri Ltd<br>Lot N1 – 998173 Lari<br>Lot N2 – 497082 Lari<br>Lot N3 – 794178 Lari             | 6. New Energy Ltd<br>Lot N1 – 863339 Lari<br>Lot N2 – 401220 Lari<br>Lot N3 – 720561 Lari |
|   | 7. Unimsheni Ltd<br>Lot N3 – 957326 Lari  |

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| <p>8. JSC Tbilimretsvmsheni<br/>Lot N1 – 1272362 Lari<br/>Lot N2 – 630083 Lari<br/>Lot N3 – 998256 Lari</p> <p>9. Dabi Ltd<br/>Lot N1 – 1028935 Lari<br/>Lot N2 – 491240 Lari<br/>Lot N3 – 812804 Lari</p> <p>10. RTG Ltd<br/>Lot N1 – 1060260 Lari<br/>Lot N2 – 499564 Lari<br/>Lot N3 – 847840 Lari</p> <p>11. Industria 2 Ltd<br/>Lot N1 – 975973 Lari<br/>Lot N2 – 473836 Lari<br/>Lot N3 – 771030 Lari</p> <p>12. Aisi Ltd<br/>Lot N1 – 934149 Lari<br/>Lot N2 – 428489 Lari<br/>Lot N3 – 767030 Lari</p> <p>13. Lobo+ Ltd<br/>Lot N1 – 966650 Lari<br/>Lot N2 – 462609 Lari<br/>Lot N3 – 770741 Lari</p> | <p>14. Alizi Ltd<br/>Lot N1 – 983872 Lari<br/>Lot N2 – 408123 Lari<br/>Lot N3 – 725482 Lari</p> <p>15. Sanitari Ltd<br/>Lot N1 – 889116 Lari<br/>Lot N2 – 415760 Lari<br/>Lot N3 – 795140 Lari</p> <p>16. Mshenebeli Ltd<br/>Lot N1 – 1220608 Lari<br/>Lot N2 – 589665 Lari<br/>Lot N3 – 961179 Lari</p> <p>17. Akhali Mtvare Ltd<br/>Lot N1 – 890381 Lari<br/>Lot N2 – 445784 Lari<br/>Lot N3 – 754981 Lari</p> <p>18. Mshenebeli 80 Ltd<br/>Lot N1 – 894495 Lari<br/>Lot N2 – 433452 Lari<br/>Lot N3 – 714799 Lari</p> <p>19. Sainjgeo Ltd<br/>Lot N1 – 995020 Lari</p> <p>20. Archstudio Peristyle Ltd<br/>Lot N1 – 944539 Lari</p> |
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**New Energy Ltd was announced the winner in Lots 1 and 2 while Mshenebeli 80 Ltd the winner in Lot 3.**

The cost of procurement is estimated at **2 334 727** Lari, however, the estimated cost of procurement per Lot is not clear.

The study of the documentation additionally provided on Lot 1 revealed that **work volumes were revised by specialists of an engineering design organization. Therefore**, the cost of contract executed with New Energy Ltd on 18 February 2009 increased from 863 315 Lari by 49318 Lari to 912697 Lari. The cost of contract, accordingly, increased by 6 percent, which is the least increase among the reviewed public procurements.

The deadline for the competition of works was 31 May 2009.

As the increase in the cost of contract, according to provided documentation, was caused by increased volume of works defined through additional measurements carried out by specialists of design organization, it can be stated that the public procurements were improperly prepared.

The final delivery-acceptance act on the Lot 1 was drawn up on 12 June 2009, while the information on the completion of works was submitted to the MDF on 29 May 2009. **Thus the terms defined for the completion of works are fully observed.**

The final delivery-acceptance act on the Lot 2 was drawn up on 5 June 2009, while the information on the completion of works was submitted to the MDF on 20 May 2009. **Thus the terms defined for the completion of works are fully observed.**

The final delivery-acceptance act on the Lot 3 was drawn up on 5 June 2009, while the information on the completion of works was submitted to the MDF on 13 May 2009. **Thus the terms defined for the completion of works are fully observed.**

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### Tender Package No SB/IDP/CW/02-2009

#### **Object of Tender - Procurement of repair-reconstruction works for IDP houses in Tbilsresi settlement of the city of Gardabani**

Brief description:

The tender announcement and tender documentation were approved on 23 January 2009. It should be noted that a number of such requirements which do not directly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. These requirements were made tougher by an amendment made to the text of announcement five days earlier. The following qualifying requirements were approved:

- a) Annual turnover of construction works (which is absolutely unclear, as it should probably be an annual turnover of an organization. If this implies the turnover of construction works alone, then it makes the things complicated twice as much and it may even be impossible to submit financial statements and balance sheets, certified by tax authorities, concerning the turnover of construction works alone over the last three years. The development of the mentioned financial documentation is strictly regulated and it contains all the activities performed by the enterprise during a calendar year).
- b) Information on the qualification of a bidding company's personnel, including the requirement that a project **manager shall have at least 10-year experience of working in the projects of similar type**. It should be noted that the legislation concerning construction does not provide for such restrictions for allowing access of a person to construction works and determining its qualification. As regards fiscal benefit, one can hardly imagine a fiscal motive for the refusal to a bidding company offering a low price because its manager has, say, 8-year experience of performing similar works.

According to the approved tender documentation, a tender proposal was evaluated by **only one criterion: price of a proposal with the priority coefficient on it set at 1**. Hence, when evaluating submitted proposals, the commission will grant advantage to any of them by price alone disregarding work experience, material resources of a bidding company and the duration of guarantee on performed works.

The tender was announced on 26 January 2009. The deadline for issuing the documentation was set on 13 February, thus violation a 20 day period stipulated in paragraph 3, article 11.

Twenty-five companies participated in the tender. The prices offered by them were:

1. Kotsitsashvili and Company commercial enterprise Lot N1 – 301430 Lari	10. Passat Ltd Lot N1 – 349965 Lari
2. Sanitary Ltd Lot N1 – 306777 Lari	11. Konstanta Ltd Lot N1 – 345571 Lari
<b>3. Erkeri Ltd</b> Lot N1 – 277752 Lari	12. Archstudi Peristyle Ltd Lot N1 – 300148 Lari
4. Tbilsresmsheni Ltd Lot N1 – 343730 Lari	13. Black Sea Group Ltd Lot N1 – 380692 Lari
5. Dagi Ltd Lot N1 – 313326 Lari	14. Tbilsatbobmsheni Ltd Lot N1 – 297010 Lari
6. New Energy Ltd Lot N1 – 287006 Lari	15. Goni Ltd Lot N1 – 312785 Lari
7. SSG Iberia Ltd Lot N3 – 493741 Lari	16. El Rio Ltd Lot N1 – 286959 Lari
8. JSC Unimsheni Lot N1 – 324832 Lari	17. Aisi Ltd Lot N1 – 314153 Lari
9. Imereti 2000 Ltd Lot N1 – 359219 Lari	18. RTG Ltd Lot N1 – 334757 Lari

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19. Libo + Ltd Lot N1 – 562994 Lari	23. Akhali Mtvare Ltd Lot N1 – 339550 Lari
<b>20. Alizi Ltd</b> Lot N1 – 265730 Lari	24. JSC Khuro Lot N1 – 298615 Lari
21. GIC Ltd Lot N1 – 350594 Lari	25. Poni Ltd Lot N1 – 280362 Lari
22. Technoimport Ltd Lot N1 – 343096 Lari	

Six bidding companies were disqualified due to qualifying requirements. As the evaluation criterion was only the price, it should be noted that the bidding company offering the lowest price, **Alizi Ltd, was disqualified. The price of his offer was less by about 15 000 Lari than that of the winner in the tender.**

The reason for disqualifying Alizi Ltd was the failure to submit the information on the qualification of the personnel. It should be noted that neither the tender announcement, nor the tender documentation specified those requirements that are not subject to further clarification in accordance with subparagraph (i), paragraph 4, article 12 and subparagraph (m), paragraph 3, article 14 of the Law of Georgia on Public Procurements. Therefore, the commission was able to clarify the above mentioned qualification requirement. It should be underlined here again that the above mentioned qualification requirement cannot create any impression about a purchaser's financial state or its ability to perform works specified in the contract.

It should be emphasized that in the evaluation table of proposals, scores put by all the three members of the commission by priorities are identical. The score "2" alone put by the chairman of the commission seems illogical because the offer of this company the second best to the winner's offer.

The winner in the tender was Erkeri Ltd with the tender proposal worth of 279,854 Lari, whereas the cost of Alizi Ltd tender proposal was 265,730 Lari, less by 14,124. **This saving comprises 5 percent of the cost of contract.**

We were not provided with the tender preparation documentation, including the design and cost-estimate documentation, which makes it impossible to identify an estimated cost of works.

The estimated cost of the procurement was 329485 Lari. As the announcement specified, the total area of the rehabilitation object comprised 1600 square meters and therefore, the cost per square meter stood at 175 Lari. This amount was too small.

The analysis of additionally submitted documents revealed that Alizi Ltd was disqualified by Protocol #3 dated 16 February 2009 of the Tender Commission, which indicated the failure to submit information on the qualification of the personnel as the grounds for the decision to disqualify. However, the study of the tender proposal submitted by Alizi Ltd showed that **the proposal contained the information on the qualification of project manager as well as chief personnel.**

It is therefore absolutely incomprehensible and ambiguous why Alizi Ltd was disqualified by the Tender Commission, when it offered the lowest price and it was price alone that was assigned the priority coefficient of evaluation.

It should be emphasized as well that the information on the qualification of the personnel of the winning company Erkeri Ltd is absolutely identical to that submitted by Alizi Ltd.

**Given the above said, it can be concluded that the decision taken by the Tender Commission violated the procurement legislation and caused the damage of 14 124 Lari to the state.**

**The study of the additionally provided documentation revealed that work volumes were revised by specialists of an engineering design organization. Therefore, the cost of contract increased from 279854 Lari by 21 398 Lari to 301 252 Lari. The cost of contract has accordingly increased by 8 percent.**

According to paragraph 5 article 21 of the Law of Georgia on Public Procurements, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. Such circumstances include the instances when in the process of implementation

the volumes of certain works are clarified or the replacement of identical though same quality materials is needed. Such changes cannot be regarded of essential nature.

**According to the contract signed on 4 March 2009, the works were to be completed on 9 May 2009. The amendment to the contract was made on 8 May 2009, i.e. a day before the deadline for the completion. The acceptance of works from the purchaser took place on 20 May 2009.**

Therefore, as the contract was amended a day before its completion date, one may assume that certain works were still to be performed and as the final acceptance of works took place on 20 May 2009, the mentioned assumption seems more trustworthy. This means that the deadlines for works specified in the contract N SB/IDP/CW/02-2009 of 4 March 2009 might have been violated.

#### **Tender Package No SB/IDP/CW/03-2009**

##### **Object of the tender –**

**Lot 1. Rehabilitation of IDP housing in buildings 1 and 2 of the former maternity hospital in the 11<sup>th</sup> micro-district of Rustavi**

**Lot 2. Rehabilitation of IDP housing in the former venereal diseases clinic at 2 Mshenebli Street in Rustavi**

Brief description:

The tender announcement and tender documentation were approved on 23 January 2009.

It should be noted that a number of such requirements which do not directly serve the aim of the Law of Georgia on Public Procurement and represent some sort of administrative barriers were defined as qualifying requirements. The following qualifying requirements were approved:

a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. It should also be noted that if the turnover of a firm comprised 7 500 000 Lari during one or two years and it was set up, for example, two years ago, it could not participate in the tender. We think, this barrier was unjustified and restricted free competition.

b) The following qualification requirement is especially worth mentioning. A necessary requirement in the tender announcement about before its amendment was that bidding companies shall not owe any back taxes and shall submit a document certifying the absence of any back taxes. By the amendment made to the announcement so that the Tender Commission did not deliberate on it (since this is not reflected in the minutes) this requirement was changed and bidding companies were required to submit a document about payments to the budget. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Considering the above said, we deem the given change unacceptable, especially when the commission has not discussed the expedience of this amendment.

**It should be emphasized that in accordance with the protocol #3 dated 16 February 2009, the Tender Commission disqualified Paul Schuler und Irao Group Ltd on the basis that it failed to provide the certificate on the absence of tax liabilities, although, the amendment to the tender announcement it was required to submit a general certificate from the tax inspection.**

c) It is important to note that the tender proposal specifies the rule which allow the qualification requirements submitted by a bidding company and a contractor to be summed up for the aims of the tender. This is absolutely unacceptable and the law does not provide for such a method. This wording was later abolished by the amendment made to the announcement without any prior deliberation on the part of the Tender Commission.

##### **The estimated cost of works was:**

**Lot 1. 2 224 482 Lari**

**Lot 2. 589 941 Lari**

The tender documentation was issued to 41 companies of which only 28 participated in the tender. The prices offered by them were:

- |   |  |
|---|--|
| 1. Kotsitsashvili and Company commercial enterprise<br>Lot N1 – 2026699 Lari<br>LotN2 – 503460 Lari | 14. Artesi Ltd<br>LotN1 – 2175230 Lari                                 |
| 2. Dagi Ltd<br>LotN1 – 1907602 Lari<br>LotN2 – 508315 Lari  | 15. JSC Khuro<br>LotN1 – 1881725 Lari<br>LotN2 – 457078 Lari           |
| 3. Imereti Ltd<br>LotN1 – 2161310 Lari  | 16. Ornamenti Ltd<br>LotN1 – 1350412 Lari                              |
| 4. Libo+ Ltd<br>LotN1 – 2235022 Lari<br>LotN2 – 602321 Lari   | 17. RTG Ltd<br>LotN1 – 1944782 Lari                                    |
| 5. Alizi Ltd<br>LotN1 – 1638360 Lari<br>LotN2 – 418809 Lari   | 18. Goni Ltd<br>LotN1 – 1825249 Lari<br>LotN2 – 484211 Lari            |
| 6. JSC Tbilsresmsheni<br>LotN1 – 1930435 Lari<br>LotN2 – 507234 Lari                                | 19. Mshenebeli 80 Ltd<br>LotN1 – 1945148 Lari                          |
| 7. Algeti Ltd<br>LotN1 – 1967172 Lari<br>LotN2 – 532703 Lari  | 20. Geokolor Ltd<br>LotN1 – 1642038 Lari<br>LotN2 – 433325 Lari        |
| 8. New Energy Ltd<br>LotN1 – 1711872 Lari<br>LotN2 – 464956 Lari                                    | 21. Black Sea Group Ltd<br>LotN1 – 1795601 Lari<br>LotN2 – 491030 Lari |
| 9. Nova Ltd<br>LotN1 – 1999809 Lari<br>LotN2 – 569232 Lari  | 22. Pael Schuler Ltd<br>LotN1 – 613204 Lari<br>LotN2 – 2390805 Lari    |
| 10. Industria 2 Ltd<br>LotN1 – 1674308 Lari<br>LotN2 – 487317 Lari                                  | 23. Sasko Ltd<br>LotN1 – 1800542 Lari<br>LotN2 – 462004 Lari           |
| 11. Mshenebeli Ltd<br>LotN1 – 2030995 Lari<br>LotN2 – 537561 Lari                                   | 24. Block Georgia Ltd<br>LotN1 – 1700325 Lari<br>LotN2 – 466413 Lari   |
| 12. Planeta Ltd<br>LotN1 – 2076019 Lari   | 25. El-Rio Ltd<br>LotN2 – 534058 Lari                                  |
| 13. Akhali Mtware Ltd<br>LotN1 – 1847921 Lari<br>LotN2 – 486596 Lari                                | 26. Imeri 21 Ltd<br>LotN2 – 565142 Lari                                |
|   | 27. Techno import Ltd<br>LotN2 – 552977 Lari                           |
|   | 28. Archstudio Peristili Ltd<br>LotN2 – 432105 Lari                    |

**The winner in the Lot was Ornamenti Ltd with the tender proposal worth of 1 350 412 Lari.**

The contract with Ornamenti Ltd was signed on 6 March 2009. Nevertheless, in the specific conditions of the contract, the term for the commencement of works was set on 9 March 2009 and the completion of works on 9 August 2009. **The cost of proposal of the winner in the Lot 1 made up 60 percent of the estimated cost of works.**

Later on, according to the amendment to the main contract on Lot 1 made by the specialists of an engineering design organization on 6 May 2009, the cost of contract increased from 1350412 Lari by 441005 Lari to 1791418 Lari. By the amendment the cost of contract increased by 33 percent ( $441005 / 1350412 * 100 = 33\%$ ).

**By the amendment to the contract the deadline for the completion of works was postponed to 9 September 2009.**

The winner in the tender on Lot 2 was Geokolor Ltd with the tender proposal worth of 433 325 Lari.

**It is important to note that the price - 418 809 Lari - proposed by Alizi Ltd was less by about 15 000 Lari than that of the winner in Lot 2. But as the protocol shows the company failed to submit the document certifying the work experience with the value of 7 500 000 Lari. This once again proves that the requirement for such a huge amount of experience impedes free competition.**

A contract on Lot 2 was signed with Geokolor Ltd on 5 March 2009. Nevertheless, in the specific conditions of the contract, the term for the commencement of works was set on 9 March 2009 and the completion of works on 9 August 2009, i.e. three month period was given for the performance of works.

**It is important to note that the cost of the proposal of the winner in Lot 2 made up 73 percent of estimated cost of works.**

**The study of tender materials revealed one very interesting circumstance. The contract was awarded on 433 325 Lari. Thereafter, according to the amendment to the main contract by the specialists of an engineering design organization on 25 May 2009, the cost of contract increased by 48 688 Lari and made up 482 013 Lari. By the amendment the cost of contract increased by 11 percent ( $48688 / 433325 * 100 = 11\%$ ).**

**The deadline for the completion of works was postponed until 24 June.**

Then, on 19 June 2009, the costs of the same contract decreased by 4 307 Lari. It is important to note that the argument for both amendments was the revision of the volumes of works. However, changing the cost of contract several times with this argument and on the basis of clarifying measurements by specialists of engineering design organization who from the very beginning were responsible to properly prepare design and cost estimate documentation, is untrustworthy and unsubstantiated.

According to paragraph 5 article 21 of the Law of Georgia on Public Procurements, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. Such circumstances include the instances when in the process of implementation the volumes of certain works are clarified or the replacement of identical though same quality materials is needed. Such changes cannot be regarded of essential nature.

High amount of changes (33 and 11 percents) raises doubts about improper implementation of procurements.

The final delivery-acceptance act on Lot 1 was drawn up on 26 June 2009 while the information on the completion of works was submitted to the MDF on 23 June 2009. **Thus the terms defined for the completion of works are fully observed.**

The final delivery-acceptance act on Lot 2 was drawn up on 21 September 2009 while the information on the completion of works was submitted to the MDF on 8 September 2009. **Thus the terms defined for the completion of works are fully observed.**

**Tender Package No SB/IDP/CW/04-2009**

**Object of the tender:**

**Lot N1 - Reconstruction of three-storied buildings No 10 and 16 at Chirnakhuli St, Lilo, Tbilisi, for IDP houses.**

**Lot N2 - Reconstruction of the administrative building of the former Tsentrroliti plant at Avchala highway, Tbilisi, for IDP houses.**

Brief description:

The tender announcement and tender documentation were approved on 26 January 2009. The Tender was announced in the 24 Saati newspaper on 28 January 2009.

It should be noted that a number of such requirements which do not directly serve the aim of the Law of Georgia on Public Procurement and represent some sort of administrative barriers were defined as qualifying requirements.

The following qualifying requirements were approved:

a) The firm shall have the experience of performing 7,5 million Lari worth of work for the last three years. For example, if the firm showed the interest towards participating in one Lot, the estimated cost of which is about 300 000 Lari, the firm shall have the experience of 7,5 million Lari. The inequality and inexpedience of this ratio is obvious.

It is important to note that according to protocol #2 of the Tender Commission meeting of 6 February 2009, a decision was taken to change the wording of the qualification data to include the following: "The above mentioned requirement applies to one Lot. In case of applying for several Lots, the minimum amount will increase in proportion to Lots" – a very interesting wording. It is not specified which amount this rule applies to. If it applies to the turnover over the last three years, then in case of bidding for two Lot, one will have to submit the information certifying the turnover of 15 000 000 Lari. If it refers to the volume of a credit line from the bank, one has to submit a certificate on 500 000 Lari in case of bidding for two Lots. It should hereby be noted that the protocol makes a general reference to this and other amendments whereas the changes to the announcement were made on 11 February. The provided qualification requirements do represent the criteria to check the reliability of a bidding company, but we think that such a high volume of financial resource is an artificial barrier to the participation in a tender and in fact, restricts the competition.

b) Information on the qualification of a bidding company's personnel, including the requirement that a project manager shall have at least 10-year experience of working in the projects of similar type. It should be noted that the legislation concerning construction does not provide for such restrictions for allowing access of a person to construction works and determining its qualification. As regards fiscal benefit, one can hardly imagine a fiscal motive for the refusal to a bidding company offering a low price because its manager has, say, 8-year experience of performing similar works.

According to the approved tender documentation, a tender proposal was evaluated by **only one criterion: price of a proposal with the priority coefficient on it set at 1**. Hence, when evaluating submitted proposals, the commission will grant advantage to any of them by price alone disregarding work experience, material resources associated with a bidding company and the duration of guarantee on performed works.

The tender documentation was taken by 34 interested companies of which only 23 took part in the tender.

The prices offered by them were:

1. Dagi Ltd  
Lot N1 – 517832 Lari  
Lot N2 – 822942 Lari

2. Libo + Ltd  
Lot N1 – 394027 Lari  
Lot N2 – 602848 Lari

3. Alizi Ltd  
Lot N2 – 475277 Lari

4. JSC Tbilsresmsheni  
Lot N1 – 537468 Lari  
Lot N2 – 459996 Lari

5. New Energy Ltd  
Lot N1 – 295168 Lari  
Lot N2 – 468558 Lari

6. Nova Ltd  
Lot N1 – 322241 Lari  
Lot N2 – 529165 Lari

7. Industria 2 Ltd  
Lot N1 – 315659 Lari  
Lot N2 – 493879 Lari

8. Mshenebeli Ltd  
Lot N1 – 345893 Lari

9. Akhali Mtvare Ltd  
Lot N1 – 343284 Lari  
Lot N2 – 544873 Lari

10. JSC Khuro  
Lot N1 – 319404 Lari  
Lot N2 – 545430 Lari

11. Ornamenti Ltd  
Lot N2 – 490856 Lari

12. RTG Ltd  
Lot N2 – 574948 Lari

13. Black Sea group Ltd  
Lot N1 – 331250 Lari  
Lot N2 – 495680 Lari

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14. Pael Schuler Ltd Lot N2 – 649255 Lari	19. Khidi Ltd Lot N1 – 395250 Lari Lot N2 – 639120 Lari
15. Archstudi Peristili Ltd Lot N1 – 704693 Lari	20. Parma Ltd Lot N2 – 612121 Lari
16. Sainjgeo Ltd Lot N1 – 563470 Lari	21. Gilmar 2 Ltd Lot N2 – 480724 Lari
17. Sani Ltd Lot N1 – 561158 Lari	22. Daviti Ltd Lot N1 – 351383 Lari Lot N2 – 540344 Lari
18. Elimp Ltd Lot N1 – 295759 Lari Lot N2 – 472167 Lari	23. Universali Ltd Lot N1 – 648530 Lari

**The winner in the Lot 1 was New Energy Ltd with the price at 295,168 Lari (cost per square meter 170 Lari).**

**The winner in the Lot 2 was Tbilsresmsheni Ltd with the price at 459,996 Lari (cost per square meter 158 Lari).**

It is important to note that in the individual evaluation table of Tender Commission members and then, correspondingly signed contracts, the lots with respective winning companies are indicated correctly, whereas in the protocol #14 dated 2 March 2009, this data is incorrect – Lots do not match respective winners, which is a mistake and is unacceptable. The Lots and corresponding winners are also indicated incorrectly in the report on tender.

The important documents such as cost estimate and drawings and specifications, envisaged by the tender documentation, were not provided. As regards the volume of works, they are referred to in general in technical terms for each Lot and are incomplete. Such general wordings create some problems in identifying the performed works, comparing actual needs and requested reimbursement and identifying a real situation.

The report on tender contains an estimated cost of procurement (991 780 Lari), but does not contain an estimated cost per Lot.

The study of the tender documentation and contracts revealed a very important circumstance.

**The contract on Lot 1 dated 8 June 2009 was amended on 6 March 2009, which increased the cost of contract and extended the deadline for the completion of works.**

The amendment increased the cost of contract by 110,870 Lari, which is 38 percent of the cost of contract. Thus, the contract cost increased by 38 percent but the procurement documentation does not contain any document which is envisaged in article 398 of the Civil Code. Therefore, this increase clearly goes counter to the requirements of paragraph 5, article 21 of the Law of Georgia on Public Procurements. The increase in a cost of contract of about 40 percent can mainly be the result of three unacceptable circumstances:

1. When public procurement is not prepared properly and/or an engineering design and cost estimate documentation does not exist at all and the procurement has been conducted without it;
2. An engineering design and cost estimate documentation was prepared poorly and absolutely incorrectly. The above mentioned, therefore, led to the performance of a number of unforeseen works. But we think that this is not the basis giving a company the right to ask for the increase in the cost since the company draws up the cost estimate independently and has the right to double-check the data provided by the purchase on site;
3. There are no serious discrepancies and circumstances but in order to ensure the victory of a purchaser in the tender, the lowest price is topped up afterwards through the increase in the cost of contract; such case overtly contains signs of the criminal offense.

Judging by the analysis of the documentation that was provided, we can claim that the tender documentation does not contain any engineering design and cost estimate documentation and the volume of works by types, specifications for materials and other technical specifications are defined in the technical conditions of the tender documentation. The tender proposals, on the other hand, contain the cost estimates which largely comply with the volumes of works provided in the technical conditions, although the types exceed significantly by cost estimates.

For example, the technical conditions of Lot #1 specify for the building at 10 Chirnakhuli Street "the arrangement of the floor with laminated parquet – 590 square meters", whereas according to the submitted cost estimate of tender proposal, the flooring works additionally include "the arrangement of wooden skirt-boards, recovery of cement flooring, etc." Thus, in this particular case, the tender proposal increases the types of works and contains additional various types of works.

It is also important that although the tender documentation does not contain the above mentioned types of works, the company, later on, asked for the correction of even these types of works and the increase in the volume, which, judging by the provided documentation, is illogical and absurd. (In other words, the company includes in its cost estimate of the tender proposal such types of works which are not defined in the tender documentation and then, requests increase in the volumes and costs of such types of works).

By the amendment the term for the completion of the works in Lot 1 also extended to 19 June 2009.

**In regards to Lot 2, an amendment to the contract of 6 March 2009 was made on 10 June 2009, increasing the cost of contracts and extending the deadline for the completion of works.**

By this amendment, the cost of contract increased from 459 996 Lari by 128 439 Lari and comprised 588 435 Lai. Thus the amendment increased the price of contract by 30 percent. The basis for the amendment, as indicated, is a poor implementation of engineering design works which is certified by the engineering design organization.

The amendment also alters the deadline for the completion of works and postpones it to 19 June 2009.

Pursuant to paragraph 5, article 21 of the Law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. The provided materials do not allow to determine whether such circumstances existed or not, but the size of the change (40 and 30 percents) gives rise to the doubt about the existence of such.

The final delivery-acceptance act on Lot 1 was drawn up on 3 July 2009 while the information on the completion of works was submitted to the MDF on 19 June 2009. **Thus the terms defined for the completion of works are fully observed.**

The final delivery-acceptance act on Lot 2 was drawn up on 30 June 2009 while the information on the completion of works was submitted to the MDF on 18 June 2009. **Thus the terms defined for the completion of works are fully observed.**

#### **Tender Package No SB/IDP/CW/05-2009**

##### **Object of the tender**

**Lot 1. Repairs to the houses No210; 198; 197; 196; 195; 85; 86; 202 of the military settlement in Senaki (the total area of 12 809 square meters);**

**Lot 2. Repairs to the houses No 206; 205; 203; 201 of the military settlement in Senaki (the total area of 11 809 square meters);**

**Lot 3. Repairs to the houses No 194; 193; 192; 190; 189; 184; 181; 188; 180 of the military settlement in Senaki (the total area of 9 839 square meters);**

**Lot 4. Repairs to the houses No 200; 199; 204; 211; 117; 98; 99; 92; 116; 147 of the military settlement in Senaki (the total area of 11 274 square meters).**

##### **Brief description:**

The tender announcement and tender documentation were approved on 27 January 2009.

It should be noted that a number of such requirements which do not directly serve the aim of the Law of Georgia on Public Procurement and represent administrative barriers that were defined as qualifying requirements.

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. It should also be noted that if the firm was set up, for example, two years ago, it could not participate in the tender. We think this barrier was unjustified and restricted free competition. The minimum experience of construction works – **10,5 million Lari** was also high.
- b) Information on the qualification of a bidding company's personnel, including the requirement that a project **manager shall have at least 10-year experience of working in the projects of similar type**. It should be noted that the legislation concerning construction does not provide for such restrictions for allowing access of a person to construction works and determining its qualification. As regards fiscal benefit, one can hardly imagine a fiscal motive for the refusal to a bidding company offering a low price because its manager has, say, only eight years of experience performing similar works.
- c) The following qualification requirement is especially worth mentioning. A necessary requirement in the tender announcement about before its amendment was that bidding companies shall not owe any back taxes and shall submit a document certifying the absence of any back taxes . By the amendment made to the announcement so that the Tender Commission did not deliberate on it (since this is not reflected in the minutes) this requirement was changed and bidding companies were required to submit a document about payments to the budget. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Considering the above said, we deem it unacceptable to ask such a document from a bidding company. **The analysis of the provided documentation revealed that Mshenebeli 80 Ltd had the indebtedness of 551 861 Lari to the budget and the incorrect definition of a qualification requirement made it impossible to select a solvent contractor.**

**The report on tender incorrectly specifies the estimated cost of procurement and the cost estimate prepared by a design organization shows a different price:**

Lot 1. – 2 304 014 Lari (Design – 1 930 680 Lari);

Lot 2. – 2 103 809 Lari (Design – 1 510 384 Lari);

Lot 3. – 1 698 172 Lari; (Design – 1 757 707 Lari)

Lot 4. – 1 839 496 Lari. (Design – 1 598 142 Lari)

The tender documentation was taken by 19 companies of which only 12 participated in the tender. The proposed prices were:

1. Dagi Ltd	4. Artes Ltd	8. Planeta Ltd
Lot N1 – 1 814 184 Lari	Lot N1 – 2 037 679 Lari	Lot N2 – 1 649 532 Lari
Lot N2 – 1 849 758 Lari	Lot N2 – 2 229 080 Lari	
Lot N3 – 1 751 818 Lari		9. RTG Ltd
Lot N4 – 1 551 604 Lari	5. Sani Ltd	Lot N2 – 1 848 025 Lari
	Lot N1 – 2 104 450 Lari	
2. New Energy Ltd	Lot N2 – 1 554 014 Lari	10. Konstanta Ltd
Lot N1 – 1 959 160 Lari	Lot N3 – 2 053 004 Lari	Lot N2 – 1 845 000 Lari
Lot N2 – 1 732 616 Lari	Lot N4 – 1 669 455 Lari	Lot N3 – 1 835 008 Lari
Lot N3 – 1 807 121 Lari		
Lot N4 – 1 372 430 Lari	6. Mshenebeli 80 Ltd	11. Oda Ltd
	Lot N1 – 1 648 853 Lari	Lot N3 – 1 250 515 Lari
3. Nova Ltd	Lot N2 – 1 530 719 Lari	
Lot N1 – 1 576 499 Lari	Lot N4 – 1 391 399 Lari	12. VIP Design Ltd
Lot N2 – 1 594 777 Lari		Lot N3 – 1 720 621 Lari
Lot N3 – 1 485 770 Lari	7. Libo + Ltd	
Lot N4 – 1 340 917 Lari	Lot N1 – 1 984 440 Lari	

**The winner in Lot 1 was Mshenebeli 80 Ltd with the tender proposal worth of 1 648 855 Lari. The cost of tender proposal made up 85 percent of the estimated cost.**

**The winner in Lot 2 was Mshenebeli 80 Ltd with the tender proposal worth of 1 530 719 Lari. The cost of tender proposal made up 101 percent of the estimated cost..**

**As it can be seen, the price offered in the tender proposal for Lot 2 was higher than the cost of purchase defined for it by the design organization. In such a case, the tender should have been completed with negative result, pursuant to paragraph 2, article 21 of the Decree #1, dated 3 January 2006, of Chairman of State Agency for Procurements, on the approval of the regulation on the Rule for Implementing Public Procurements.**

The winner in Lot 3 was Oda Ltd with the tender proposal worth of 1 250 515 Lari. The cost of tender proposal made up 71 percent of the estimated cost.

The winner in Lot 4 was New Energy Ltd with the tender proposal worth of 1 422 220 Lari. The cost of tender proposal made up 89 percent of the estimated cost.

**It is important to note that Nova Ltd offered better terms than the winning companies in Lot N1 and Lot N 4. The tender proposal with the cost of 1 576 499 Lari (i.e. less by 72 354 Lari) for Lot 1; the tender proposal with the cost of 1 340 917 Lari (i.e. less by 81 303 Lari). It should be emphasized that Nova Ltd was disqualified on two grounds:**

1. The company submitted the certificate on a credit line of 300 00 Lari, issued by a microfinance organization Alpha Express. The certificate was to be issued by a banking institution. The qualification requirement in the tender documentation was defined as follows: a bidding company was to submit a certificate from the bank on the availability of a credit line **or the readiness to open a credit line**. It is noteworthy that a credit line is one of banking products, which a bank is ready to open to a customer on certain conditions. If the Tender Commission had made an emphasis on the already existing credit line, it might have been used as one of the factors proving the capability of the company. It is noteworthy that the certificate submitted by Nova Ltd contained the information on already existing credit line. Considering all the above said, the mentioned qualification requirement is not a determinant of any fiscal effect or the reliability of a bidding company.
2. The company submitted the information on performed works during 2007-2008 only. The list of works performed in earlier years was not submitted. According to subparagraph (i), paragraph 4, article 12 of the Law of Georgia on Public Procurements, the announcement on the conduct of a tender shall indicate those "requirements, which are not subject to further clarification during the selection." A similar regulation is provided in subparagraph (l), paragraph 3, article 15 of the same Law. According to paragraph 3, article 15 of the Law of Georgia on Public Procurements, **the Tender Commission does not disqualify a tender proposal if it includes inconsistencies that do not materially change or contradict the essence of the requirements specified in the tender documentation or correction of which does not affect the essence of the tender documentation**. Since the above indicated qualification requirement does not represent the requirement envisaged by this subparagraph, it was possible for the Tender Commission to clarify the work experience with the bidding company and avoid its disqualification given public fiscal interests. Especially, when balance sheets and tax declarations for three years were submitted by the company.

**The winner in Lot 1 was Mshenebeli 80 Ltd with the tender proposal worth of 1 648 855 Lari.** The contract with the winner was signed on 6 March 2009. It is noteworthy that the terms of contract and tender proposal concerning the timeline do not coincide. Moreover, although the contract was signed on 6 March 2009, the dates for the commencement and completion of works in specific conditions are set on 9 March and 9 September 2009, respectively.

**It is noteworthy that based on the meeting in the Senaki municipality's administrative body on 15 March 2009, representatives of a design organization, Architecture Office, double-checked the volumes and types of works on site. It should be noted that this architectural company was the implementer of the design and cost estimate works. On 9 June 2009 an amendment and addendum were made to the contract, increasing the cost of contract from 1 648 855 Lari by 655159 Lari to 2 304 014 Lari. Thus the tender price of the contract increased by almost 40 percent ( $655\ 159/1\ 648\ 855*100=39,7\%$ ). The project price was 1 930 680 Lari.**

**The deadline for the completion of works also extended for one month, to 9 October.**

**Later, the contract was amended again and the cost of the contract increased from 2 304 014 Lari by 62473 Lari to 2366487 Lari. That is, in total the tender value of the contract increased by 44 percent ( $717632/1648855*100=44\%$ ). The estimated (project) price was 1 930 680 Lari.**

**The deadline for the completion of works also extended for one more month, to 9 November.**

**The winner in Lot 2 was Mshenebeli 80 Ltd with the tender proposal worth of 1 530 719 Lari.** The contract with the winner was signed on 10 March 2009. The deadline for the completion of works was set on 9 September 2009.

It is noteworthy that based on a meeting in the Senaki municipality's administrative body on 15 March 2009, representatives of a design organization Architecture Office double-checked the volumes and types of works on site. It should be noted that this architectural company was the implementer of the design and cost estimate works. On 9 June 2009, an amendment and addendum were made to the contract, **increasing the cost of contract from 1530719 Lari by 573 090 Lari to 2 103 809 Lari. Thus the tender price of the contract increased by almost 38 percent (573 090/1 530 719\*100=37,4%). The project price was 1 510 384 Lari.**

The deadline for the completion of works also extended for one month, to 10 October.

Later, the contract was amended again and **the cost of the contract increased from 2 103 809 Lari by 17508 Lari to 2121318 Lari. That is, in total, the tender value of the contract increased by 39 percent (590598/1530719\*100=39%). The estimated (project) price was 1 930 680 Lari.**

The deadline for the completion of works also extended for one more month, to 9 November.

**The winner in Lot 3 was Oda Ltd with the tender proposal worth of 1 250 515 Lari.** The contract with the winner was signed on 9 March 2009. **The deadline for the completion of works was set on 9 September 2009.**

It is noteworthy that based on the meeting in the Senaki municipality's administrative body on 15 March 2009, representatives of a design organization, Architecture Office, double-checked the volumes and types of works on site. It should be noted that this architectural company was the implementer of the design and cost estimate works. On 8 June 2009 an amendment and addendum were made to the contract, **increasing the cost of contract from 1250515 Lari by 447656 Lari to 1698171 Lari. This the tender price of the contract increased by almost 36 percent (447 656 / 1 250 515 = 35,7%). The project price was 1757707 Lari.**

The deadline for the completion of works also extended for one month, to 9 October.

Later, the contract was amended again and **the cost of the contract increased from 1698171 Lari by 32600 Lari to 1730771 Lari. That is, in total, the tender value of the contract increased by 39 percent (480256/1250515\*100=39%). The estimated (project) price was 1757707 Lari.**

The deadline for the completion of works also extended for one more month, to 9 November.

**The winner in Lot 4 was New Energy Ltd with the tender proposal worth of 1 422 220 Lari.** The contract with the winner was signed on 6 March 2009. The terms for the commencement and completion of works were defined in the specific conditions as 9 March and 9 September 2009, respectively.

It is noteworthy that based on the meeting in the Senaki municipality's administrative body on 15 March 2009, representatives of a design organization, Architecture Office, double-checked the volumes and types of works on site. It should be noted that this architectural company was the implementer of the design and cost estimate works. On 8 June 2009 an amendment and addendum were made to the contract, **increasing the cost of contract from 1 422 220 Lari by 417275 Lari to 1839495 Lari. This the tender price of the contract increased by almost 30 percent (417275/1422220\*100= 29,3%). The project price was 1598 142 Lari.**

The deadline for the completion of works also extended for one month, to 9 October.

Later, the contract was amended again and **the cost of the contract increased from 1839495 Lari by 173608 Lari to 2013104 Lari. That is, in total the tender value of the contract increased by 42 percent (590883/1422220\*100=42%). The estimated (project) price was 1598 142 Lari.**

The deadline for the completion of works also extended for one more month, to 9 November.

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. Such circumstances include the instances when in the process of implementation the volumes of certain works are clarified or the replacement of identical though same quality materials is needed. Such changes cannot be regarded of essential nature.

Therefore, such a high increase (44%, 39%, 39% and 42%) in the price of a contract cannot be regarded as an essential change in circumstances or understandings about the works having turned out to be wrong, as each bidding company had full possibility to study the volumes and nature of works to be performed on site. It is

also not trustworthy that representatives of a design organization responsible for the preparation of design and cost estimate documentation again visit the rehabilitation object and find out essential errors in volumes and types of works. In reality, their action runs counter to their performed works. Given all the above said, the described public procurements were carried out with gross violations.

**By changes made to contract the deadlines for the completion of works were postponed to 9 November 2009.**

**Accordingly, the information submitted by implementing companies to the MDF was as follows: Lot N1 and Lot N2 - 9 November 2009, Lot N3 - 5 November 2009, and Lot N4 -9 November 2009. However, the final delivery-acceptance acts on completed works were not drawn up as on 24 November. Therefore, it is not clear whether the MDF accepted the works by 24 November.**

**By 24 November, a two-week term defined by paragraph 6 of specific conditions of a contract had already passed since the notification about the completion of works (5 November/9 November). Therefore, the failure to handover the mentioned works by 24 November, is a breach of paragraph 6 of specific conditions of a contract on the part of the MDF.**

#### **Tender Package No SB/IDP/CW/06-2009**

##### **Object of Tender**

##### **Lot 1. Repairs to houses No1 and 2 in the IDP settlement in Agara Village of Kareli District and cottages No1-5 in Doglauri Village**

Brief description:

The tender announcement and tender documentation were approved on 28 January 2009.

It should be noted that a number of such requirements which do not directly serve the aim of the law of Georgia on Public Procurement and represent some sort of administrative barriers were defined as qualifying requirements. On 11 February a change to the announcement was approved, eliminating certain inconsistencies. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. It should also be noted that if the firm which had an annual turnover of 3 000 000 Lari and set up, for example, two years ago, could not participate in the tender. We think, this barrier was unjustified and restricted free competition.
- b) Information on the qualification of a bidding company's personnel, including the requirement that a project manager shall have at least 10-year experience of working in the projects of similar type. It should be noted that the legislation concerning construction does not provide for such restrictions for allowing access of a person to construction works and determining its qualification. As regards fiscal benefit, one can hardly imagine a fiscal motive for the refusal to a bidding company offering a low price because its manager has, say, 8-year experience of performing similar works.
- c) The following qualification requirement is especially worth mentioning. A necessary requirement in the tender announcement about before its amendment was that bidding companys shall not owe any back taxes and shall submit a document certifying the absence of any back taxes. By the amendment made to the announcement so that the Tender Commission did not deliberate on it (since this is not reflected in the minutes) this requirement was changed and bidding companys were required to submit a document about payments to the budget. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Considering the above said, we deem the given change unacceptable, especially when the commission did not discuss the expedience of this amendment.
- d) It is important that a tender announcement specifies the rule, which allows the qualification requirements submitted by a bidding company and subcontractor to be summed up for the aims of tender, which is absolutely unacceptable and the effective legislation does not provide for such a method. With an amendment made to the announcement later (the argument for the change is

formulated in an ambiguous manner, it seems not to be drawn up in Georgia) the commission fully released a subcontractor from qualification requirements. According to paragraph 3, article 9 of the Order #1, dated 3 January 2006, of Chairman of State Procurement Agency on the approval of regulation on the Rule for Implementing State Procurements, "Qualifying requirements shall also extend to subcontractors if they are expected to be involved at any stage of the implementation of state procurement." Regardless of a stage at which a contractor gets involved in the performance of works, the main contractor shall notify a purchaser about this and submit the documents and information certifying the same qualifying criteria, which the contractor met itself. Thus, a subcontractor cannot engage in the performance unless it meets qualifying criteria individually, irrespective of any sum-ups and reservations on the release.

The tender documentation was issued to five companies of which four participated in the tender. The prices submitted by them were as follows:

1. Archstudio Peristyle Ltd

Lot N1 – 77008 Lari

2. New Energy Ltd

Lot N1 – 99324 Lari

3. Alizi Ltd

Lot N1 – 85509 Lari

4. Sopmshenkompleksi Ltd

Lot N1 – 123727 Lari

**The estimated cost of works comprised 144 243 Lari.**

The winner in the tender was Archstudio Peristyle Ltd with the total value of 83 569.

**The price of the winner's tender proposal made up 58 percent of the estimated cost. Thus one can say that the bidding company, in order to win the competition, made an offer of almost half of the estimated cost.**

It is an important fact that obligatory requirements in the list of basic data include a 5 percent bank guarantee for the performance of the contract, which should exceed the deadline for the completion of works by more than 30 days. The submitted bank guarantee was valid till 7 June 2009, which is not more than 30 days after the deadline of 7 June for the completion of the contract.. However, later, in the specific conditions the above mentioned term was adjusted in accordance with the validity of bank guarantee submitted by the company.

**It is important that the contract was signed on 5 March 2009 while the commencement date for the works in the specific conditions was set on 9 March.**

**According to the specific conditions, the works were to be completed on 9 May whereas the term for the completion of the works under the contract was 30 days and a schedule for works was accordingly drawn up for 30 days. Thus, in the proposal the completion of works was considered about one month earlier.**

According to paragraph 1, article 16 of the Law of Georgia on Public Procurements, "Subject to the rule established by the law and on the basis of tender proposal conditions of the winner, contract on state procurement is made between procuring agency and the winner." Accordingly, the procuring agency when awarding the contract, if tender proposal conditions do not run counter to obligatory requirements in the tender documentation, shall observe the conditions submitted in the tender proposal. This provision was grossly violated in this particular case.

It is also noteworthy that the price of tender proposal by Archstudio Peristyle Ltd comprised 77 008 Lari at the opening of the packages. Thereafter, by applying ambiguous method, the cost of tender proposal was calculated and the contract was signed on 83 569 Lari.

It is important that on 9 May 2009 an act was signed between the design organization, Kareli local administrative body and MDF's technical supervisor, which determined the need for additional works on the construction facility. It is noteworthy that the contract on public procurement was signed with the winner on 5 March 2009, but the date for the commencement of works was 9 March. This means that the implementer of works could actually commence works envisaged in the contract only after 9 March 2009. Hence, the rights and obligations related to works envisaged in the contract could have arisen only after 9 March 2009. It is therefore strange how the winning company managed to sign on the same day the act on a construction site

with the design organization, Kareli local administrative body and MDF's technical supervisor and confirm the need for additional works.

In this particular case, it is established that the winning company was aware in advance of the discrepancies between the volumes indicated in the tender documentation and actual volumes, but nevertheless the company submitted the price in the tender proposal, which was less by 58 percent than the estimated cost.

All the above said gives rise to the doubt that the bidding companies, in order to gain advantage, decreased the cost of works by 42 percent and after winning the tender, asked for the increase in the cost of works before the execution of the contract. All these give rise to serious doubts about the conduct of the public procurement in accordance with the legislation. Bearing in mind the above said, the addendum to the contract signed by the parties on 30 March 2009, increasing the cost of contract by 16 245 Lari to 99 814 Lari, was absolutely unacceptable. We think that the company could have considered the factual circumstances existing on site in both volumes and costs, especially when the total cost of the mentioned works was estimated at 144 243 Lari by an engineering design organization.

On 30 March 2009, the contract was amended and **the cost of contract increased from 83569 Lari by 16245 Lari to 99814 Lari. Thus the tender value of the contract increased by almost 19 percent (16245/83569\*100=19%).**

The final delivery-acceptance act on the Lot 1 was drawn up on 3 April 2009, while the information on the completion of works was also submitted to the MDF on 3 April 2009. **Thus the terms defined for the completion of works are fully observed. However, this tender, could be the only case in the history of public procurements by the promptness of conducting the public procurement.**

#### **Tender Package No SB/IDP/CW/07-2009**

##### **Object of the tender**

##### **Lot 1. Rehabilitation of two four-storied buildings of the former vocational school in 11<sup>th</sup> micro-district of Rustavi, for IDP houses**

Brief description:

The tender announcement and tender documentation were approved on 29 January 2009. The tender announcement was published on 31 January 2009.

It should be noted that a number of such requirements which do not directly serve the aim of the Law of Georgia on Public Procurement and represent some sort of administrative barriers were defined as qualifying requirements. On 11 February a change to the announcement was approved, eliminating certain inconsistencies. The qualification requirements were:

- a) Financial documentation certifying the financial state of the company for the last three years. Thus, this requirement prevented companies established two or one year ago from participating in the tender. It should also be noted that if the company had a turnover of 8 100 000 Lari in a year or two and was set up, for example, two years ago, could not participate in the tender. We think, this barrier was unjustified and restricted free competition.
- b) Information on the qualification of a bidding company's personnel, including the requirement that a project manager shall have at least 10-year experience of working in the projects of similar type. It should be noted that the legislation concerning construction does not provide for such restrictions for allowing access of a person to construction works and determining its qualification. As regards fiscal benefit, one can hardly imagine a fiscal motive for the refusal to a bidding company offering a low price because its manager has, say, eight years of experience performing similar works.
- c) The following qualification requirement is especially worth mentioning. A necessary requirement in the tender announcement about before its amendment was that bidding companies shall not owe any back taxes and shall submit a document certifying the absence of any back taxes. By the amendment made to the announcement so that the Tender Commission did not deliberate on it (since this is not reflected in the minutes) this requirement was changed and bidding companies were required to submit a document about payments to the budget. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500

000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Considering the above said, we deem the given change unacceptable, especially when the commission did not discuss the expediency of this amendment.

- d) It is important that a tender announcement specifies the rule, which allows the qualification requirements submitted by a bidding company and a subcontractor to be summed up for the aims of tender, which is absolutely unacceptable and the effective legislation does not provide for such a method. With an amendment made to the announcement later (the argument for the change is formulated in an ambiguous manner, it seems it was not written in Georgia) the commission fully released a subcontractor from qualification requirements. According to paragraph 3, article 9 of the Order #1, dated 3 January 2006, of Chairman of State Procurement Agency on the approval of regulation on the Rule for Implementing State Procurements, "Qualifying requirements shall also extend to subcontractors if they are expected to be involved at any stage of the implementation of state procurement." Regardless of a stage at which a contractor gets involved in the performance of works, the main contractor shall notify a purchaser about this and submit the documents and information certifying the same qualifying criteria, which the contractor met itself. Thus, a subcontractor cannot engage in the performance unless it meets qualifying criteria individually, irrespective of any sum-ups and reservations on the release.

**The cost of works was estimated at 895 711 Lari.**

The tender documentation was issued to 25 companies of which 18 participated in the tender. The prices submitted by them were as follows:

1. Dagi Ltd Lot N1 – 689 098 Lari	10. Berdi Ltd Lot N1 – 571 111 Lari
2. New Energy Ltd Lot N1 – 697 450 Lari	11. Iberia Ltd Lot N1 – 690 332 Lari
3. Nova Ltd Lot N1 – 673 905 Lari	12. Mshenebeli Ltd Lot N1 – 1 568 747 Lari
4. Interplasti Ltd Lot N1 – 1 036 687 Lari	13. Elimpi Ltd Lot N1 – 807 532 Lari
5. Sani Ltd Lot N1 – 1 484 636 Lari	14. Sasko Ltd Lot N1 – 746 681 Lari
6. Mshenebeli 80 Ltd Lot N1 – 748 563 Lari	15. Alizi Ltd Lot N1 – 591 584 Lari
7. Daviti Ltd Lot N1 – 598 760 Lari	16. Khuro Ltd Lot N1 – 657 468 Lari
8. Geokolori Ltd Lot N1 – 608 752 Lari	17. MG Tbilisi Ltd Lot N1 – 1 083 353 Lari
9. Aliansi Ltd Lot N1 – 688 342 Lari	

**The winner in the tender was Daviti Ltd with the tender proposal of 598 760 Lari.**

It is important that as compared to the winner, two bidding companies had better tender proposals, namely, Berdi Ltd with the tender proposal of 571 111 Lari and Alizi Ltd with the tender proposals of 591 584 Lari, but they were disqualified as the total cost of their work experience over the past three years did not comprise 8 100 000 Lari. We believe that such a high qualification requirement is very inconsistent with the cost of works to be performed. In particular, the cost of work comprised only 10 percent of the qualification requirement, which does not contribute to fiscal efficiency and represent an excessive barrier for identifying the trustworthiness of a bidding company.

**The cost of winner's proposal made up 66 percent of estimated cost of works.**

It is important to note that the contract was signed on 5 March 2009 while the date for the commencement of works was set as 9 March in the specific conditions of the contract.

**It is important to note that according to the letter of 20 March 2009 from Daviti Ltd, specialists of the engineering design company, Interdesign-2000 Ltd, double-checked the volumes of works and came up with corrected volumes. We wonder what was the data the same specialists applied to prepare the initial design and cost-estimate documentation?**

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. Such circumstances include the instances when in the process of implementation the volumes of certain works are clarified or the replacement of identical though same quality materials is needed. Such changes cannot be regarded of essential nature. In this particular case the matter is an improper preparation of procurements and inaccuracy of design and cost-estimate documentation.

It is important here as well that the bidding company decreased the cost of works by 34 percent in order to gain advantage over rivals in the tender.

**After winning the tender, the company asked for the increase of cost of works from 598760 Lari by 125067 Lari to 723 827 Lari.** This comprised the 21 percent increase of the tender value ( $125067/598760*100=21\%$ ). The bidding company could have studied in advance the rehabilitation facility and when determining the cost of tender proposal taken into account those circumstances which, in his view, were not considered. It is noteworthy that all the circumstances which thereafter appeared to constitute the basis for the increase of the cost of contract, existed before and none of them emerged in the process of works. At any case, such an argument was not applied either by the implementer of works or by a purchaser.

The final delivery-acceptance act on the completion of works was drawn up on 24 August 2009, while the information on the completion of works was submitted to the MDF on 7 August 2009. **Thus the terms defined for the completion of works are fully observed.**

#### **Tender Package No SB/IDP/CW/08-2009**

##### **Object of the tender –**

**Lot 1. Repairs to three-storied dormitory building of vocational school No 121 in Tbilsresi Settlement of Gardabani Town. SB/IDP/CW/08-2009-L1**

**Lot 2. Repairs to the IDP housing in the former National Guards' building in Gardabani Town. SB/IDP/CW/08-2009-L2**

##### **Brief description:**

The text of tender announcement and the tender documentation were approved on 2 February 2009.

It should be noted that a number of such requirements which do not directly serve the aim of the Law of Georgia on Public Procurement and represent some sort of administrative barriers were defined as qualifying requirements.

- a) Financial documentation certifying the financial state of the company for the last three years. Thus, this requirement prevented companies established two or one year ago from participating in the tender. It should also be noted that if the company was set up, for example, two years ago, it could not participate in the tender. We think, this barrier was unjustified and restricted free competition.
- b) **It is an amazing case as the decision by the Tender Commission and accordingly, the content of the protocol, in essence differs from qualification requirements in the tender announcement. In particular, a qualification requirement in the announcement read that a bidding company must have an average annual turnover of 1 million Lari for the past three years, whereas after the amendment it said that a three-year turnover must comprise 3 million Lari in total. The wording in the protocol is absolutely different from this wording and the data indicated in the protocol is incomprehensible.**

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- c) Information on the qualification of a bidding company's personnel, including the requirement that a project **manager shall have at least 10-year experience of working in the projects of similar type**. It should be noted that the legislation concerning construction does not provide for such restrictions for allowing access of a person to construction works and determining its qualification. As regards fiscal benefit, one can hardly imagine a fiscal motive for the refusal to a bidding company offering a low price because its manager has, say, 8-year experience of performing similar works.
  - d) The following qualification requirement is especially worth mentioning. A necessary requirement in the tender announcement about before its amendment was that bidding companies shall not owe any back taxes and shall submit a document certifying the absence of back taxes. By the amendment made to the announcement so that the Tender Commission did not deliberate on it (since this is not reflected in the minutes) this requirement was changed and bidding companies were required to submit a document about payments to the budget. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect.

Eleven companies participated in the tender.

The prices submitted by them were:

1. JSC Tbilsresmsheni Lot N1 – 139232 Lari Lot N2 – 348164 Lari	7. Arch studio Peristyle Lot N1 – 91100 Lari Lot N2 – 204728 Lari
2. New Energy Ltd Lot N1 – 98329 Lari Lot N2 – 221733 Lari	8. Algeti Ltd Lot N1 – 99983 Lari Lot N2 – 249861 Lari
3. Construction Company Konstanta Ltd Lot N1 – 96163 Lari Lot N2 – 213501 Lari	9. MK Ltd Lot N1 – 113263 Lari Lot N2 – 269778 Lari
4. Erkeri Ltd Lot N1 – 104201 Lari Lot N2 – 252528 Lari	10. Pasati Ltd Lot N2 – 209182 Lari
5. MG Tbilisi Ltd Lot N1 – 139369 Lari Lot N2 – 333424 Lari	11. Dagi Ltd Lot N1 – 83067 Lari Lot N2 – 197595 Lari
6. Berdi Ltd Lot N1 – 87203 Lari Lot N2 – 208566 Lari	

**The report on the tender indicated an incorrectly estimated cost of procurement for Lot 2, whereas the cost estimate prepared by the engineering design organization showed a correct cost:**

**Lot 1. – 140 264 Lari;**

**Lot 2. – 349 783 Lari; (project cost estimate – 296 426 Lari)**

**Dagi Ltd, with the tender proposal worth of 83067 Lari was announced the winner in Lot 1. A contract was signed on 3 March 2009. It should be noted that the price in the tender proposal was less by 60 percent than the estimated cost.**

It is important to note that on 20 May 2009, according to the explanatory note prepared by the MDF employee on the basis of the letter of 20 March 2009 from Dagi Ltd, the cost of contract increased by 32 709 Lari to 115 778 Lari. The basis for the amendment was the double-checking of volumes of works on site and their recalculation by the design organization Gardabanproekti Ltd. It should be noted that the above mentioned architectural company was the implementer of design and cost-estimate works and therefore, responsible for their accuracy and completeness.

The amendments and addenda to the contract were made on 19 May 2009 whereas the explanatory note was prepared on 20 May 2009 and go-aheads on them were given on 21 May 2009.

The tender price of the contract increased by almost 40 percent ( $32\ 709/83\ 067=39.3\%$ ). The project cost was 140 264 Lari.

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. Such circumstances include the instances when in the process of implementation the volumes of certain works are clarified or the replacement of identical though same quality materials is needed. Such changes cannot be regarded of essential nature.

Therefore, such a high increase in the price of a contract cannot be regarded as an essential change in circumstances or understandings about the works having turned out to be wrong, as each bidding company had full possibility to study the volumes and nature of works to be performed on site. It is also not trustworthy that representatives of the design organization responsible for the preparation of design and cost estimate documentation visited again the rehabilitation object and found out essential errors in volumes and types of works. In reality, their action runs counter to their performed works. Given all the above said, the described public procurements were carried out with gross violations.

**As amazing as it might seem, an MDF employee, in his explanatory note of 2 June 2009, substantiated that the project volumes of construction works exceeded the actual volumes and demanded the decrease in the cost of contract. Therefore, the increased cost decreased by 16 592 Lari and the final cost of the contract comprised 99 185 Lari. One can hardly imagine how new circumstances emerge so frequently, becoming the basis for further changes. In June 2009, accordingly, a new amendment to the contract was signed. It is important that the contract bears no date and the exact date of the execution of the contract is not clear.**

It should be noted that under the contract signed on 3 March 2009, the works were to be completed on 9 June 2009. The final delivery-acceptance act of works was signed on 21 June 2009. There is no document available which would evidence the completion of works within the specified timeframe. One can have a serious doubt that the works were completed with delays.

**Dagi Ltd, with the tender proposal worth of 197 595 Lari was announced the winner in Lot 2. A contract was signed on 3 March 2009. It should be noted that the price in the tender proposal was less by 67 percent than the estimated cost.**

A contract worth of 197 579 Lari was signed on 3 March 2009.

The deadline for the completion of the contract was 9 June 2009.

**It is important that on 20 May 2009, according to the explanatory note prepared by the MDF employee on the basis of the letter of 20 March 2009 from Dagi Ltd, the cost of contract increased by 25439 Lari to 223 018 Lari. The basis for the amendment is the double-checking of volumes of works on site and their recalculation by the design organization Gardabanproekti Ltd. It should be noted that the above mentioned architectural company was the implementer of design and cost-estimate works and therefore, responsible for their accuracy and completeness.**

**It is also very important that the amendments and addenda to the contract were made on 19 May 2009 whereas the explanatory note was prepared on 20 May 2009 and go-aheads on them were given on 21 May 2009.**

**The tender price of the contract increased by almost 13 percent ( $25\ 439/197\ 595=12.8\%$ ). The project cost was 296 426 Lari.**

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. Such circumstances include the instances when in the process of implementation the volumes of certain works are clarified or the replacement of identical though same quality materials is needed. Such changes cannot be regarded of essential nature.

Therefore, such a high increase in the price of a contract cannot be regarded as an essential change in circumstances or understandings about the works having turned out to be wrong, as each bidding company had full possibility to study the volumes and nature works to be performed on site. It is also not trustworthy that representatives of a design organization responsible for the preparation of design and cost estimate documentation visited again the rehabilitation object and found out essential errors in volumes and types of works. In reality, their action runs counter to their performed works. Given all the above said, the described public procurements were carried out with gross violations.

**As amazing as it might seem, an MDF employee, in his explanatory note of 2 June 2009, substantiated that the project volumes of construction works exceeded the actual volumes and demanded the decrease in the cost of contract. Therefore, the increased cost decreases by 23 205 Lari and the final cost of contract comprises 199 813 Lari. One can hardly imagine how come that such new circumstances emerge so frequently, becoming the basis for further changes. In June 2009, accordingly, a new amendment to the contract was signed. It is important that the contract bears no date and the exact date of the execution of the contract is not clear.**

It should be noted that under the contract signed on 3 March 2009, the works were to be completed on 9 June 2009. The final delivery-acceptance act of works was signed on 21 June 2009. There is no document available which would evidence the completion of works within the specified timeframe. One can have a serious doubt that the works were completed with delays.

#### **Tender Package No SB/IDP/CW/09-2009**

##### **Tender Object-**

##### **Lot 1. Rehabilitation to flats No1 and 2 and hotel in the training center in Poti Town.**

Brief description:

The text of tender announcement and the tender documentation were approved on 2 February 2009. The tender announcement was published on 4 February 2009.

It should be noted that a number of such requirements which do not directly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. It should also be noted that the firm which had a turnover of 10 800 000 Lari in a year or two and was set up, for example, two years ago, could not participate in the tender. We think, this barrier was unjustified and restricted free competition.
- b) Information on the qualification of a bidding company's personnel, including the requirement that a project manager shall have at least 10-year experience of working in the projects of similar type. It should be noted that the legislation concerning construction does not provide for such restrictions for allowing access of a person to construction works and determining its qualification. As regards fiscal benefit, one can hardly imagine a fiscal motive for the refusal to a bidding company offering a low price because its manager has, say, 8-year experience of performing similar works.
- c) The following qualification requirement is especially worth mentioning. A necessary requirement in the tender announcement about before its amendment was that bidding companies shall not owe any back taxes and shall submit a document certifying the absence of any back taxes. By the amendment made to the announcement so that the Tender Commission did not deliberate on it (since this is not reflected in the minutes) this requirement was changed and bidding companies were required to submit a document about payments to the budget. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Considering the above said, we deem the given change unacceptable, especially when the commission has not discussed the expedience of this amendment.
- d) It is important that a tender announcement specifies the rule, which allows the qualification requirements submitted by a bidding company and a subcontractor to be summed up for the aims of tender, which

is absolutely unacceptable and the effective legislation does not provide for such a method. With an amendment made to the announcement later, the commission fully released a subcontractor from qualification requirements. According to paragraph 3, article 9 of the Order #1, dated 3 January 2006, of Chairman of State Procurement Agency on the approval of regulation on the Rule for Implementing State Procurements, "Qualifying requirements shall also extend to subcontractors if they are expected to be involved at any stage of the implementation of state procurement." Regardless of a stage at which a contractor gets involved in the performance of works, the main contractor shall notify a purchaser about this and submit the documents and information certifying the same qualifying criteria, which the contractor met itself. Thus, a subcontractor cannot engage in the performance unless it meets qualifying criteria individually, irrespective of any sum-ups and reservations on the release.

- e) It should be noted that the announcement about the tender specified a minimal requirement for a bidding company to submit the information on the qualification of its personnel, which was not met by the winning company. The announcement also required that a project manager or a person of equal position shall have a 10-year work experience. The winning company submitted qualification data on a person who was the engineer of the company. Thus, the issue whether an engineer in the construction company can be regarded as a manager or a person of equal position raises doubts.

#### **The cost of works was estimated at 2 126 252 Lari.**

The tender documentation was issued to nine companies of which seven companies participated in the tender. The prices submitted by them were:

1. Sani Ltd Lot N1 – 1733947 Lari	5. Konstanta Ltd Lot N1 – 1843577 Lari
2. Planeta Ltd Lot N1 – 1717127 Lari	6. Alionni 99 Ltd Lot N1 – 3997291 Lari
3. New Energy Ltd Lot N1 – 1478764 Lari	7. VIP Design Ltd Lot N3 – 2099017 Lari
4. Khidi Ltd Lot N1 – 1612990 Lari	

**The winner in the tender was New Energy Ltd with the tender proposal of 1478846 Lari. The cost of winner's proposal made up 69 percent of the estimated cost of works.**

The contract was signed on 6 March 2009.

The term for the completion of works was specified as six months of the execution of the contract.

It is important to note that the contract was signed on 6 March 2009, the date for the commencement of works, according to the specific conditions, was set on 9 March while the deadline for the completion on 9 September.

**The analysis of tender materials revealed one very important circumstance. The contract was signed on 1 478 846 Lari, which included:**

**Rehabilitation to flat No1 in the training center in Poti – 403 289 Lari;**

**Rehabilitation to flat No2 in the training center in Poti – 382 667Lari;**

**Rehabilitation to hotel in the training center in Poti – 692 890 Lari.**

The above listed types of works were envisaged by tender documentation as well as tender proposal and the contract on public procurement SB/IDP/CW/09-2009.

On 21 May 2009, a contracting company sent a letter to the MDF, saying that the engineering design and cost-estimate documentation was incomplete and contained a number of inaccuracies, also, volumes of works did not tally with the real volumes.

On 10 June 2009, the contract SB/IDP/CW/09-2009 was amended. According to the amendment, the types of works were formulated as follows:

**Rehabilitation to flat No1 in the training center in Poti: before the amendment was 403 289 Lari – after the amendment increased to 455 838 Lari;**

**Rehabilitation to flat No2 in the training center in Poti: before the amendment was 382 667Lari – after the amendment increased to 445 913 Lari;**

**Rehabilitation to hotel in the training center in Poti: before the amendment was 692 890 Lari – after the amendment was entirely deleted from the list of works to be performed.**

**Thus, after the amendments to two types of works, the cost of works increased by 115 795 and the third type of works was entirely deleted from the procurement.**

**The cost of contract after the amendment made up  $455838 + 445913 = 901752$  Lari, i.e. the cost of contract increased by 115 796, that is about 15 percent.**

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. Such circumstances include the instances when in the process of implementation the volumes of certain works are clarified or the replacement of identical though same quality materials is needed. Such changes cannot be regarded of essential nature.

Pursuant to the same provision, an unwarranted decrease or elimination from the contract of types of works envisaged in the tender is prohibited.

Given the above mentioned, it can be said that the procurement was imperfect and illegal.

The final delivery-acceptance act on the completion of works was drawn up on 22 September 2009, while the information on the completion of works was submitted to the MDF on 9 September 2009. **Thus the terms defined for the completion of works are fully observed.**

#### **Tender Package No SB/IDP/CW/10-2009**

##### **Object of the tender –**

##### **Lot 1. Rehabilitation to kindergarten No10, Gori local office of the Ministry of Foreign Affairs in Gori Town and the residential building in Variani Village**

Brief description:

The text of tender announcement and the tender documentation were approved on 2 February 2009. The tender announcement was published on 4 February 2009.

It should be noted that a number of such requirements which do not directly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. It should also be noted that the turnover of a firm was to comprise 600 000 Lari. We think, this barrier was unjustified and restricts free competition.
- b) Information on the qualification of a bidding company's personnel, including the requirement that a project manager shall have at least 10-year experience of working in the projects of similar type. It should be noted that the legislation concerning construction does not provide for such restrictions for allowing access of a person to construction works and determining its qualification. As regards fiscal benefit, one can hardly imagine a fiscal motive for the refusal to a bidding company offering a low price because its manager has, say, 8-year experience of performing similar works.
- c) The following qualification requirement is especially worth mentioning. A necessary requirement in the tender announcement about before its amendment was that companies shall not owe any back taxes and shall submit a document certifying the absence of any back taxes. By the amendment made to the announcement so that the Tender Commission did not deliberate on it (since this is not reflected in the minutes) this requirement was changed and companies were required to submit a document about payments to the budget. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can

it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Considering the above said, we deem the given change unacceptable, especially when the commission did not discuss the expedience of this amendment.

- d) It is important that a tender announcement specified the rule, which allows the qualification requirements submitted by a bidding company and subcontractor to be summed up for the aims of tender, which is absolutely unacceptable and the effective legislation does not provide for such a method. With an amendment made to the announcement later the commission fully released a subcontractor from qualification requirements. According to paragraph 3, article 9 of the Order #1, dated 3 January 2006, of Chairman of State Procurement Agency on the approval of regulation on the Rule for Implementing State Procurements, "Qualifying requirements shall also extend to subcontractors if they are expected to be involved at any stage of the implementation of state procurement." Regardless of a stage at which a contractor gets involved in the performance of works, the main contractor shall notify a purchaser about this and submit the documents and information certifying the same qualifying criteria, which the contractor met itself. Thus, a subcontractor cannot engage in the performance unless it meets qualifying criteria individually, irrespective of any sum-ups and reservations on the release.

**The cost of works was estimated at 958 000 Lari.**

Eleven companies participated in the tender and submitted the following prices:

1. Konstanta Ltd – 1035973 Lari;
2. SSG Iberia Ltd – 996722 Lari;
3. Sani Ltd – 899931 Lari;
4. Dagi Ltd – 818862 Lari;
5. Mshenebeli Ltd – 871251 Lari;
6. Elimp Ltd – 939128 Lari;
7. Archstudio Pristyle Ltd – 847292 Lari;
8. Planta Ltd – 769872 Lari;
9. Nova Ltd – 804363 Lari;
10. New Energy Ltd – 569166 Lari;
11. Black Sea group Ltd – 898438 Lari;

**New Energy was declared a winner with the tender proposal worth of 569 211 Lari, thus comprising 59 percent of the estimated cost of procurement.**

The contract was executed on 6 March 2009.

The term for the completion of works was six months of the execution of the contract - 9 July 2009.

On 7 July 2009, i.e. two days earlier the deadline for the completion of works under the contract, the contract was amended extending the deadline for the completion of works until 24 August 2009.

On 19 August 2009, or five days earlier the deadline of the completion of works under the contract, the contract was amended the second time again extending the deadline to 15 September 2009. **The amendments also increased the cost of contract from 569211 Lari by 166811 Lari to 736022 Lari. Thus, the cost of contract increased by 30 percent -  $166811/569211*100=30\%$ .**

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. Such circumstances include the instances when in the process of implementation the volumes of certain works are clarified or the replacement of identical though same quality materials is needed. Such changes cannot be regarded of essential nature.

**It is important to note that the submission of such a low price by the tender proposal (59 percent of the estimated cost) and then the increase of the tender price by 30 percent proves not only a poor level of the public procurement but also gives rise to doubts about the legality of the procurement.**

As the deadline for the completion of works (15 September 2009) had already expired, it was interesting to find out whether the contractual obligations assumed by the parties were fully performed. To this end we needed to obtain the information certifying the completion of works.

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 14 September 2009, i.e. a day earlier the deadline for the completion of works, the contract was amended for the third time postponing the deadline to 15 October 2009. It is also important to note that the provided materials do not contain any reference to the objective grounds for the amendment.

On 23 October 2009, i.e. after the expiration of the deadline for the completion of works, the contract was amended for the fourth time, increasing the cost of contract by 253 Lari and decreasing it by 2695 Lari. In the end, the cost of contract comprised 733 580 Lari.

**On 28 January 2010, a delivery-acceptance act on works was signed between the parties, which indicated that the works were completed on 15 October 2009. It is strange that if works were completed on 15 October 2009 (although no letter to the MDF certifying this completion is available), why it became a problem to accept the works until before 28 January 2009. Thus, the works were accepted with more than three-month delay. Besides, materials contain no reference to the objective reason causing this delay.**

#### **Tender Package No SB/IDP/CW/11-2009**

##### **Object of the tender -**

##### **Lot 1. Repairs to the back office of public school No4 in Kaspi Town**

##### **Lot 2. Repairs to the IDPs' housing in the Youth House and the former hotel "Comuna" Ltd in Kaspi Town**

##### **Brief description:**

The text of tender announcement and the tender documentation were approved on 3 February 2009. The tender announcement was published in February 2009.

It should be noted that a number of such requirements which do not directly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. On 11 February, amendment to the announcement was approved, which eliminated certain inconsistencies. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. It should also be noted that a rather high requirement was set for the work experience.
- b) Information on the qualification of a bidding company's personnel, including the requirement that a project manager shall have at least 10-year experience of working in the projects of similar type. It should be noted that the legislation concerning construction does not provide for such restrictions for allowing access of a person to construction works and determining its qualification. As regards fiscal benefit, one can hardly imagine a fiscal motive for the refusal to a bidding company offering a low price because its manager has, say, 8-year experience of performing similar works.
- c) The following qualification requirement is especially worth mentioning. A necessary requirement in the tender announcement about before its amendment was that companies shall not owe any back taxes and shall submit a document certifying the absence of any back taxes. By the amendment made to the announcement so that the Tender Commission did not deliberate on it (since this is not reflected in the minutes) this requirement was changed and companies were required to submit a document about payments to the budget. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Considering the above said, we deem the given change unacceptable, especially when the commission did not discuss the expedience of this amendment.
- d) It is important that a tender announcement specified the rule, which allows the qualification requirements submitted by a bidding company and subcontractor to be summed up for the aims of tenderer, which is absolutely unacceptable and the effective legislation does not provide for such a method. With an amendment made to the announcement later the commission fully released a subcontractor from qualification requirements. According to paragraph 3, article 9 of the Order #1, dated 3 January 2006,

of Chairman of State Procurement Agency on the approval of regulation on the Rule for Implementing State Procurements, "Qualifying requirements shall also extend to subcontractors if they are expected to be involved at any stage of the implementation of state procurement." Regardless of a stage at which a contractor gets involved in the performance of works, the main contractor shall notify a purchaser about this and submit the documents and information certifying the same qualifying criteria, which the contractor met itself. Thus, a subcontractor cannot engage in the performance unless it meets qualifying criteria individually, irrespective of any sum-ups and reservations on the release.

Ten companies were issued the tender documentation of which nine participated in the tender and submitted the following prices:

- |  |   |
|--|---|
| 1. MK Ltd<br>Lot 1 – 298427 Lari;<br>Lot 2 – 131141 Lari.        | 6. New Energy Ltd<br>Lot 1 – 291255 Lari;<br>Lot 2 – 101976 Lari.           |
| 2. Ponit Ltd<br>Lot 1 – 277416 Lari;<br>Lot 2 – 44251 Lari.      | 7. Dagi Ltd<br>Lot 1 – 274235 Lari;   |
| 3. Aguna Ltd<br>Lot 2 – 42953 Lari.                              | 8. Archstudio Peristyle Ltd<br>Lot 1 – 268306 Lari;<br>Lot 2 – 121594 Lari. |
| 4. Berdi Ltd<br>Lot 1 – 253118 Lari;<br>Lot 2 – 28670 Lari.      | 9. Alizi Ltd<br>Lot 1 – 244732 Lari;  |
| 5. Mshenebeli Ltd<br>Lot 1 – 392786 Lari;<br>Lot 2 – 43087 Lari. |   |

**The sum of estimated cost of works for both Lots totaled 418 868 Lari. However, the estimated cost per Lot is unknown.**

It is important to note that in the commission's view "the volume of works envisaged by Lot 2 was misunderstood by bidding companies due to a generalized nature of the design documentation (the drawing included the building adjacent to the rehabilitation facility)." Therefore, following the decision of the commission, the purchase on this Lot was completed with a negative result.

Paragraph 2, article 21 of the Order #1, dated 3 January 2006, of Chairman of State Procurement Agency on the approval of regulation on the Rule for Implementing State Procurements, specifies those concrete grounds the presence of which serves as the basis for the commission to decide on the completion of the tender with a negative outcome. In particular:

**"Tender is considered completed with negative outcome if:**

- a) none of submitted qualification data or/and tender proposals meets the requirement set by a procuring entity;**
- b) none of submitted bid prices conforms to the financial capacity of a procuring entity."**

The above listed grounds do not include the circumstance which substituted a basis for the commission's decision. Thus the commission stepped over the limits of its discretion and by taking the decision ignored the requirements of the law. At the same time, it should be emphasized that the commission itself detected and emphasized the fact of improper preparation of public procurements.

It is important to note that a qualification requirement for Lot 2 was a three-year work experience of no less than 4 200 000 Lari. The best price for this Lot - 244 732 Lari - was offered by Alizi Ltd. After double-checking the qualification data of this company, the commission took a decision to disqualify it. In particular, the accuracy of the information submitted by the bidding company concerning its work experience was not confirmed by the procuring agency, the Ministry of Internal Affairs (the company indicated the contract price instead of the cost of actually performed works). Whereas the Kobuleti municipality confirmed that Alizi Ltd failed to perform the obligations assumed under the contract and the contract was terminated and the company penalized. **It should however be noted here that the municipality did not include the company in the register of unreliable suppliers.**

**The contracts with the two purchasers aside, one should note that the total cost of works performed by Alizi Ltd over the past three years made up 6 000 000 Lari. However, the commission did not investigate whether the company implemented other contracts successfully. Therefore, the decision of the commission on the disqualification of the bidding company offering the best conditions was not expedient.**

**The winner in the Lot 1 was Berdi Ltd with the tender proposal worth of 253 117 Lari.**

The contract was signed on 10 March 2009; the deadline for the completion of works under the contract was 10 June 2009.

The amendment to the contract on 21 May 2009 extended the deadline to 1 July 2009.

The amendment made to the contract on 23 June 2009 increased the cost of contract from 253 117 Lari by 65 227 Lari to 318 345 Lari. The basis of the amendment, as indicated, was the volumes of works clarified through measurements conducted by specialists of an engineering design organization and representatives of the local municipality.

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. Such circumstances include the instances when in the process of implementation the volumes of certain works are clarified or the replacement of identical though same quality materials is needed. Such changes cannot be regarded of essential nature. In this particular case, the matter is incomplete preparation of procurement and inaccuracy of design and cost-estimate documentation.

The amendment made to the contact on 9 June 2009, decreased the costs of contract by 5 380 Lari, which finally comprised 312 964 Lari. The basis here again was the clarification of the volumes of work through measurements. It should be underlined that the works should have been completed on 1 July following the contract, however, the amendment was made on 9 July. Although the parties indicated in the amendment that the works had been completed, the final delivery-acceptance act was drawn up on 14 July 2009. Thus, the exact date of the completion of works is unknown.

It should be noted in general that the title of the Tender Commission protocol #2 of 7 February 2009 and the content of the protocol differ from each other.

## **Tender Package No SB/IDP/CW/11-2009L2**

### **Object of the tender –**

#### **Lot 2. Repairs to the IDPs' housing in the Youth House and the former hotel "Comuna" Ltd in Kaspi Town**

Brief description:

The text of tender announcement and the tender documentation were approved on 13 March 2009. The tender announcement was published in 16 March 2009.

It should be noted that a number of such requirements which do not directly serve the aim of the Law of Georgia on Public Procurement and represent some sort of administrative barriers were defined as qualifying requirements. On 11 February, amendment to the announcement was approved, which eliminated certain inconsistencies. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender.
- b) The following qualification requirement is especially worth mentioning. A necessary requirement in the tender announcement about before its amendment was that bidding companies shall not owe any back taxes and shall submit a document certifying the absence of any back taxes. By the amendment made to the announcement so that the Tender Commission did not deliberate on it (since this is not reflected in the minutes) this requirement was changed and bidding companies were required to submit a document about payments to the budget. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and

reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect.

c) It is important to note that the requirements set forth in the law regarding the announcement about tender and tender documentation were violated. Paragraph 4, article 12 and paragraph 3, article 14 of the law of Georgia on Public Procurements, specifies the information and requirements which shall be submitted in detail. In this particular case, the announcement about the tender only partially indicated those qualifying requirements which were included in the list of basic data of tender documentation. This is a gross violation of procedures for the conduct of bidding.

**The estimated cost of works was 139 426 Lari.**

Four companies participated in the tender and submitted the following prices:

1. Aguna Ltd – 117785 Lari;
2. Mariali Ltd – 277416 Lari;
3. Nova Ltd – 125353 Lari;
4. Berdi Ltd – 122451 Lari.

Aguna Ltd and Mariali Ltd were disqualified for the submission of incomplete documentation.

**Berdi Ltd with the tender proposal of 121303 Lari was announced the winner, which comprised 87 percent of the estimated cost of the procurement.**

The contract was signed on 24 March 2009.

The deadline for the completion of works under the contract was 30 July 2009.

The technical supervision over the construction works was carried out by Vazha Kirtava.

**On 6 July 2009, the contract was amended exceeding the cost of contract from 121303 Lari by 18122 Lari to 139426 Lari. The basis for the amendment was the clarifying measurements of volumes of works conducted by specialists of the engineering design organization, representatives of local municipality, contractor and customer. The amendment increased the cost of contract by 15 percent ( $18122/121303*100=15\%$ ).**

The amendment to the contract made on 22 July 2009 postponed the deadline for the completion of works to 15 August 2009.

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. Such circumstances include the instances when in the process of implementation the volumes of certain works are clarified or the replacement of identical though same quality materials is needed. Such changes cannot be regarded of essential nature. In this particular case, the matter was incomplete preparation of procurement and inaccuracy of design and cost-estimate documentation.

As the deadline for the completion of works under the contract is set on 15 August, it is expedient to additionally request the documentation certifying the completion and the corresponding payment, for scrutiny.

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 22 June 2009, the contract was amended for the second time postponing the deadline to 15 August 2009. The construction company refers to the increase in the volume of works as to a ground for the amendment.

On 18 August 2009, the parties signed the delivery-acceptance act which indicates that the works were completed on 15 August 2009.

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**Tender Package No SB/IDP/CW/12-2009**

**Object of the tender –**

**Lot 1. Repairs to the dormitory of factory No201, the kindergarten of hydromechanisms factory, vocational school, Potigaz administrative buildings, kindergartens at Baratashvili St. in Poti Town**

Brief description:

The text of tender announcement and the tender documentation were approved on 83 February 2009. The tender announcement was published on 9 February 2009.

It should be noted that a number of such requirements which do not directly serve the aim of the Law of Georgia on Public Procurement and represent some sort of administrative barriers were defined as qualifying requirements. On 11 February, amendment to the announcement was approved, which eliminated certain inconsistencies. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. A turnover of **8 400 000 Lari** worth construction works over the three years was defined as the requirement for the work experience.
- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect.

**The estimated cost of works comprised 1 000 000 Lari.**

Three companies participated in the tender and submitted the following prices:

1. New Energy Ltd – 895033 Lari;
2. Dagi Ltd – 894863 Lari;
3. Sharagzamsheni 1 Ltd – 870105 Lari.

**Sharagzamsheni 1 Ltd** was disqualified for the submission of incomplete information.

**The winner in the tender was Dagi Ltd with the tender proposal worth of 894 889 Lari, which comprised 89 percent of the estimated cost of procurement.**

The contract was signed on 16 March 2009, while the deadline for the completion of works was 23 August 2009.

The technical supervision over the construction works was conducted by Zaza Pirtskhalaishvili.

**On 25 June 2009, the contract was amended exceeding the cost of contract from 894 889 Lari by 393133 Lari to 1288022 Lari. The basis for the amendment was the clarifying measurements of volumes of works conducted by specialists of the design organization and representatives of local municipality. The amendment increased the cost of contract by 44 percent (393133 /894889 \*100=44%).**

The amendment to the contract on 25 June 2009, postponed the deadline for the completion of works to 23 September 2009.

**By the amendment to the contract made on 22 September 2009, i.e. three days earlier the expiration of the contract, the cost of contract increased from 1288022 Lari by 67444 Lari to 1355467 Lari. The basis of the amendment, as indicated, was the refusal of EnergoproGeorgia to install individual meters in apartments and the obligation assumed by the state to fund these works. Calculations of additional works were made by specialists of the design organization and representatives of local municipality. In total, the amendment increased the contract by 393133+67444=460577 Lari, i.e. by 51 percent.**

Also, the amendment to the contract extended the deadline for the completion of works to 8 October 2009.

By the amendment on 7 October 2009, i.e. a day earlier the expiry of the term specified in the contract, the cost

of contract was decreased from 1355467 Lari by 28859 Lari to 1326608 Lari. The basis for this amendment was the absence of the need for design organization's specialists to do certain type of works. In particular, in the view of the authors of the engineering design, the works on outer water supply and sewerage systems were to be deleted from the procurement. The inclusion of these works in the first wording of the contract and elimination of these works a day prior to the completion of works from the procurement proves the poor preparation of public procurement.

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. Such circumstances include the instances when in the process of implementation the volumes of certain works are clarified or the replacement of identical though same quality materials is needed. Such changes cannot be regarded of essential nature. In this particular case, the matter was incomplete preparation of procurement and inaccuracy of design and cost-estimate documentation. Moreover, a high amount of increase (51 Percent) makes the change unsubstantiated and gives rise to the doubt about its legality.

As the deadline for the completion of works under the contract is set on 15 August, it is expedient to additionally request the documentation certifying the completion and the corresponding payment, for scrutiny.

#### **Tender Package No SB/IDP/CW/13-2009**

##### **Object of the tender –**

**Lot 1. Reconstruction of ten-storied administrative building into 108-apartment building at Akhalgazrdoba Avenue in Kutaisi Town. The total area of 5335 square meters. SB/IDP/CW/13-2009-L1**

**Lot 2. Reconstruction of the kindergarten into 16-apartment house at Belorussia St. in Kutaisi Town. SB/IDP/CW/13-2009-L2**

##### **Brief description:**

The text of the tender documentation and the tender documentation were approved on 6 February 2009. The tender was announced on 10 February 2009.

**It is important to note that the issuance of tender documentation at the MDF started on 11 February 2009. The clarified materials presented on 20 November 2009 reveal that the MDF executed the contract with Khuro Ltd on the preparation of design and cost estimate documentation (which is further used as a tender material – architecture part, explanatory note, drawings of apartments, electrical part, sewerage-water supply system, specification of windows and doors, preliminary cost estimate of construction, photo material) on the construction works envisaged in both Lots. The works envisaged in the contract was to be completed on 27 February 2009.**

**It is therefore absolutely unclear what type of tender material was issued by the MDF on 11 February 2009, when the term for the preparation of documents comprising it (architecture part, explanatory note, drawings of apartments, electrical part, sewerage-water supply system, specification of windows and doors, preliminary cost estimate of construction, photo material) ended on 27 February 2009.**

Moreover, according to the contract of 20 January 2009, the implementer was obliged to submit reports on 17 February – a detailed initial variant of the project, and on 27 February – the final variant of the project together with the tender materials. Materials on clarified procurements, which were provided additionally, do not include the reports envisaged in the contract. It was only on 31 March 2009 that the delivery-acceptance act was drawn up between the MDF and the implementer, Khuro Ltd. It suggests that the works were finally completed on 31 March 2009. However, by the above mentioned date the tender had been already completed, the winning companies revealed and the contracts awarded.

##### **All the above said is a gross violation of the requirements specified in the procurement legislation.**

It should be noted that a number of such requirements which do not directly serve the aim of the Law of Georgia on Public Procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. It should also be noted that a rather high requirement was set for the work experience. In particular, a bidding company was to have the turnover of construction works worth of **21 000 000 Lari** to participate in the tender on Lot N1 and **4 200 000 Lari** to participate in the tender on Lot N2.
- b) Information on the qualification of a bidding company's personnel, including the requirement that a project **manager shall have at least 10-year experience of working in the projects of similar type**. It should be noted that the legislation concerning construction does not provide for such restrictions for allowing access of a person to construction works and determining its qualification. As regards fiscal benefit, one can hardly imagine a fiscal motive for the refusal to a bidding company offering a low price because its manager has, say, 8-year experience of performing similar works.
- c) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect.

The total cost of works on both Lots made up:

Lot N1 – 4099633 Lari,

Lot N2 – 322663 Lari.

Twelve companies participated in the tender and submitted the following prices:

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| 1. Tegika Universal Ltd<br>Lot 2 – 288770 Lari;                    | 7. Mshenebeli 80 Ltd<br>Lot 1 – 2416383 Lari;<br>Lot 2 – 222189 Lari;  |
| 2. Alioni 99 Ltd<br>Lot 1 – 4204627 Lari;<br>Lot 2 – 344381 Lari;  | 8. Nove Ltd<br>Lot 2 – 215131 Lari;                                    |
| 3. Iberia 21 Ltd<br>Lot 2 – 256787 Lari;                           | 9. Oda Ltd<br>Lot 2 – 178007 Lari;                                     |
| 4. New Energy Ltd<br>Lot 1 – 2738829 Lari;<br>Lot 2 – 175951 Lari; | 10. Block Georgia Ltd<br>Lot 1 – 1890141 Lari;<br>Lot 2 – 174227 Lari; |
| 5. Mshenebeli Ltd<br>Lot 2 – 258106 Lari;                          | 11. Akhali Mtvare Ltd<br>Lot 1 – 2333737 Lari;<br>Lot 2 – 210945 Lari; |
| 6. Archstudio Peristyle Ltd<br>Lot 2 – 172533 Lari;                | 12. Sasko Ltd<br>Lot 1 – 2362997 Lari;<br>Lot 2 – 206496 Lari;         |

**The winner in Lot 1 was Block Georgia Ltd with the contract price of 1881596 Lari.**

The contract was executed on 26 March 2009.

The deadline for the completion of works was set on 30 October 2009.

The technical supervision over the construction works was conducted by Anzor Andghuladze.

**It is important to note that on 30 October 2009, the implementing company submitted a letter/notification to the MDF on the completion of works. It also indicated some problems, impeding the full handover of completed works. According to paragraph 6 of specific conditions of the contract SB/IDP/CW/13-2009-L1 dated 26 March 2009, "Within two weeks after receiving the contractor's notification on the completion of works, a procuring agency shall accept the object and sign a corresponding delivery-acceptance act." The procurement materials provided on 20 November 2009 by the MDF for the aim of clarification do not contain the mentioned delivery-acceptance act, which provides the**

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**ground to conclude that the facility was still not accepted in violation of the terms of the contract.**

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 12 November 2009, the delivery-acceptance act was signed, which indicates that the works were completed on 30 October 2009.

The winner in **Lot 2** was Archstudio Peristyle Ltd with the contract price of 172533 Lari.

The contract was executed on 20 March 2009.

The deadline for the completion of works was set on 20 June 2009.

The technical supervision over the construction works was conducted by Anzor Andghuladze.

**The amendment to the contract SB/IDP/CW/13-2009-L2 made on 1 July 2009, decreased the cost of works by 4924 Lari. It is important to note that the contract was to be completed on 20 June 2009 and the notification on the completion was accordingly submitted by the implementing company on 19 June. Therefore amending the contract after 10 days of the completion of works and the expiry of the contract is unimaginable and illogical.**

**According to an explanatory note of a representative of the MDF on 22 July 2009, the inspection of the facility on site revealed certain flaws and it took the company two weeks to eliminate them. The company was penalized with 3352 Lari for the violation.**

**The delivery-acceptance act was signed on 4 July 2009.**

#### **Tender Package No SB/IDP/CW/14-2009**

**Object of the tender –**

**Lot 1. Repairs to house No34 at Gr. Khanzeli St. in Akhaltsikhe Town for IDP houses.**

Brief description:

The text of the tender documentation and the tender documentation were approved on 8 February 2009. The tender was announced on 11 February 2009.

It should be noted that a number of such requirements which do not directly serve the aim of the Law of Georgia on Public Procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. It should also be noted that a rather high requirement was set for the work experience. In particular, a bidding company was to have the turnover of construction works worth of **21 000 000 Lari** to participate in the tender on Lot N1 and **3 300 000 Lari** to participate in the tender on Lot N2.
- b) Information on the qualification of a bidding company's personnel, including the requirement that a **project manager shall have at least 10-year experience of working in the projects of similar type**. It should be noted that the legislation concerning construction does not provide for such restrictions for allowing access of a person to construction works and determining its qualification. As regards fiscal benefit, one can hardly imagine a fiscal motive for the refusal to a bidding company offering a low price because its manager has, say, 8-year experience of performing similar works.
- c) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

**The estimated cost of works comprised 233931 Lari.**

Four companies participated in the tender and submitted the following prices:

1. Astoria Ltd – 199992 Lari;
2. Arali Ltd – 265441 Lari;
- 3. Poni Ltd – 149716 Lari;**
4. Gonio Ltd – 209998 Lari.

**The winner in the tender was Poni Ltd with the cost of contract worth of 149716 Lari, thus comprising 64 percent of the estimated cost of the procurement.**

The contract was executed on 12 March 2009.

The deadline for the completion of works was set on 16 June 2009.

The technical supervision over the construction works was conducted by Zviad Parkadze.

Later, on 13 May 2009, the head of Akhaltsikhe's administrative body sent a letter #239/3 to the MDF with the request to allocate funds for works that additionally emerged. On 28 May 2009, the implementer, Poni Ltd, also sent a letter #68 the MDF with the request to finance increased volumes of work. On 8 June 2009, on the basis of explanatory note, the contract was amended, increasing the cost of tender from 149716 Lari by 19304 Lari to 169020 Lari. Thus the tender cost increased by 13 percent ( $19304/149716*100=13\%$ ).

The deadline for the completion of works extended as well.

It is noteworthy that the above mentioned amendment was the most well-substantiated and the procurement materials contained all the documents that evidenced the need for the amendment. In this particular case we can only say that the problem was poor preparation of the procurement.

On 25 June 2009, the implementing company sent a letter to the MDF on the completion of works. The delivery-acceptance act was signed on 6 July.

It should also be noted that after the completion of works, on 2 July 2009, the amendment was made to the contract and the cost insignificantly increased by 2040 Lari. It is a little strange why this change was made when the company notified about the completion of works on 25 June.

#### **Tender Package No SB/IDP/CW/15-2009**

##### **Object of the tender –**

**Lot 1. Repairs to the former building of fuel and lubricants and the former vocational school No 64 in Khashuri Town SB/IDP/CW/15-2009 L1**

**Lot 2. Repairs to IDP apartments in the three-storied building No3 of Sanatorium "Nakaduli", building "D" of Sanatorium Mziuri, Sanatorium "Nakaduli" and children's' dormitory in Surami Settlement**

Brief description:

The text of the tender documentation and the tender documentation were approved on 10 February 2009. The tender was announced on 12 February 2009.

It should be noted that a number of such requirements which do not directly serve the aim of the Law of Georgia on Public Procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. It should also be noted that rather high requirement was set for the work experience. In particular, a bidding company shall have the turnover of construction works worth of **5 700 000 Lari** to participate in the tender on Lot N1 and **9 000 000 Lari** to participate in the tender on Lot N2.
- b) Information on the qualification of a bidding company's personnel, including the requirement that a project manager shall have at least **10-year experience of working in the projects of similar type**. It should be noted that the legislation concerning construction does not provide for such restrictions for allowing access of a person to construction works and determining its qualification. As regards fiscal benefit, one can hardly imagine a fiscal motive for the refusal to a bidding company offering a low price because its manager has, say, 8-year experience of performing similar works.
- c) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not

set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

The estimated cost of works for both Lots is 1 378 273 but the estimated cost per Lot is unknown.

Seven companies participated in the tender and proposed the following prices:

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| 1. Ornamenti Ltd<br>Lot N1 – 399920 Lari                             | 5. Sasko Ltd<br>Lot N1 – 452787 Lari<br>Lot N2 – 744874 Lari     |
| 2. SSG Iberia Ltd<br>Lot N1 – 415939 Lari                            | 6. Sainjgeo Ltd<br>Lot N1 – 405605 Lari                          |
| 3. Nova Ltd<br>Lot N1 – 405080 Lari                                  | 7. Geokolori Ltd<br>Lot N1 – 452717 Lari<br>Lot N2 – 722664 Lari |
| 4. Block Georgia Ltd<br>Lot N1 – 474691 Lari<br>Lot N2 – 682670 Lari |  |

**The winner in Lot No1 was Ornamenti Ltd with the tender proposal worth of 399920 Lari.**

**The contract on Lot No 1 was signed with Ornamenti Ltd on 10 April 2009, with the total value of 399922 Lari. On 9 June 2009 the addendum to this contract was signed, increasing the cost of contract by 204730 Lari to 604 661 Lari. Thus, the contract value increased by 66 percent ( $399922/604661*100=66\%$ ).**

Thereafter, the contract was amended the second time extending the deadline for the completion of works to 22 September.

**The winner in Lot No2 was Block Georgia Ltd with the tender proposal worth of 682 670 Lari.**

It is important to underline that the tender proposal of Block Georgia Ltd as well as the contract envisaged the following types of work with respective costs:

1. Repair works of children's' dormitory in Sanatorium Mziuri in Surami town – 64 576 Lari;
2. Repair works of building "D" of Sanatorium Mziuri – 155 320 Lari;
3. Repair works of the three-storied building No3 of Sanatorium "Nakaduli" - 78 583 Lari;
4. Repair works of a former building of Sanatorium "Surami" – 461 717 Lari.

The total cost of works comprised **682 832 Lari**.

**The contract on Lot No2 was signed on 8 April 2009, with the total value of 682 832 Lari. On 24 June 2009 the addendum to this contract was signed, decreasing the cost of contract by 474 5950 Lari to 208 236 Lari. This amendment resulted in removing certain types of works from the procurement and the cost of remaining works increased. In particular:**

1. Repair works of children's' dormitory in Sanatorium Mziuri in Surami Settlement – 91 705 Lari (**instead of 64 576 Lari**);
2. Repair works of building "D" of Sanatorium Mziuri – 0 Lari (**instead of 155 320 Lari**);
3. Repair works of the three-storied building No3 of Sanatorium "Nakaduli" - 84 766 Lari (**instead of 78 583 Lari**);
4. Repair works of a former building of Sanatorium "Surami" – 0 Lari (**instead of 461 717 Lari**).

**By decreasing the types of works, the cost of contract increased by 65 077 Lari. In fact, the cost of works envisaged in the tender comprised 143 159 Lari ( $64 576+78 583=143 159$ ). Thus, comparing the increase with the actual tender price by types of works, the cost of works increased by 45 percent ( $65 077 /143 159*100=45\%$ ).**

**Besides, although the volumes and types of works envisaged by the contract on Lot No2 decreased, the deadline of works extended from 13 August 2009 to 27 September 2009.**

Thereafter, on 21 September 2009 the above mentioned contract was amended again, increasing the contract price from 208 236 Lari by 65 087 Lari to 273 324 Lari. Thus, the tender price of the contract increased by 91 percent ( $130164/143159*100=91\%$ ).

**That amendment also extended the deadline for the completion of works to 27 October.**

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. Such circumstances include the instances when in the process of implementation the volumes of certain works are clarified or the replacement of identical though same quality materials is needed. Such changes cannot be regarded of essential nature.

According to the above provision, an unwarranted change or removal of types of works from a procurement contract, envisaged in the tender, is also prohibited.

Considering the above mentioned, it can be said that given the high increase in the contractual cost (66 and 91 percents) the procurement was imperfect and illegal.

The final delivery-acceptance act on the Lot 1 was drawn up on 5 October 2009, while the information on the completion of works was submitted to the MDF on 21 September 2009. **Thus the terms defined for the completion of works are fully observed.**

The final delivery-acceptance act on the Lot 2 was not drawn up, while the information on the completion of works was submitted to the MDF on 26 October 2009. **Thus the terms defined for the completion of works are fully observed. However, the failure by the MDF to hand over the facility as of 24 November, is the violation of the two-week term specified in article 6 of special conditions.**

**Tender Package No SB/IDP/CW/16-2009**

**Object of the tender –**

**Lot No1. Repairs to the IDP housing in Vaziani Settlement of Gardabani Town.**

Brief description:

The text of the tender documentation and the tender documentation were approved on 11 February 2009. The tender was announced on 12 February 2009.

It should be noted that a number of such requirements which do not directly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. It should also be noted that a rather high requirement was set for the work experience. In particular, a bidding company was to have the turnover of construction works worth of **16 500 000 Lari**.
- b) Information on the qualification of a bidding company's personnel, including the requirement that a project **manager shall have at least 10-year experience of working in the projects of similar type**. It should be noted that the legislation concerning construction does not provide for such restrictions for allowing access of a person to construction works and determining its qualification. As regards fiscal benefit, one can hardly imagine a fiscal motive for the refusal to a bidding company offering a low price because its manager has, say, 8-year experience of performing similar works.
- c) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

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**The estimated cost of works comprised 1 919 670 Lari.**

Five companies participated in the tender and proposed the following prices:

1. New Energy Ltd – 1516536 Lari;
2. Block Georgia Ltd – 1455269 Lari;
3. **Dagi Ltd – 1354473 Lari;**
4. Vagi Ltd – 1760980 Lari;
5. Black Sea group Ltd – 1389781 Lari.

**The winner in the tender was Dagi Ltd with the tender proposal worth of 1354675 Lari, which comprised 70 percent of the estimated cost of procurement.**

The contract was signed on 16 March 2009.

The deadline for the completion of works was set on 23 August 2009.

The technical supervision on the construction works was performed by Kakha Bolqvadze.

**On 17 June 2009 the addendum to this contract was signed, increasing the cost of contract from 1354675 Lari by 446231 Lari to 1 800906 Lari. Thus, the contract value increased by 33 percent ( $446231/1354675*100=33\%$ ). The ground for the amendment, as quoted, was the volumes of construction works revised by representatives of engineering design organization. It should however be noted that the documentation does not contain a document evidencing the mentioned circumstance.**

**Moreover, the deadline for the completion of works extended from 23 August 2009 to 23 September 2009.**

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. Such circumstances include the instances when in the process of implementation the volumes of certain works are clarified or the replacement of identical though same quality materials is needed. Such changes cannot be regarded of essential nature. The imperfect preparation of the public procurement is obvious, but the high increase in the contractual price (by 33 percent) gives rise to some doubts about the legality of the procurement.

**As the deadline for the completion of works is 23 September,** the additional documentation, certifying the completion of works and corresponding payments, should be requested for the further scrutiny.

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 21 September 2009, the contract was amended for the second time and as the volumes of works for the repair of building No13 and external water supply and sewerage systems increased under the addendum to the contract of 17 June 2009, the deadline for the repairs to building No13 and external water supply and sewerage systems was specified as 8 November 2009 while for other works remained unchanged - 23 September 2009.

On 3 November 2009, the contract was amended for the third time, extending the deadline for the completion of works until 25 December 2009. It is important that by the time the amendment was made to the contract the term for the completion of certain types of works (23 September 2009) expired and the company was to be penalized.

The amendment of 3 November 2009 also increased the cost of works from 1800906 Lari by 204690 Lari to 2005596 Lari. Thus, the cost of contract increased by 48 percent. ( $650921/1354675 *100=48\%$ ).

It is important that the amendment also increased the volumes of those works, which were increased under the amendment to the contract of 17 June 2009. Thus, one can conclude that the amendment was made twice on one and the same grounds, which is absolutely unacceptable and unjustified.

What is more important, the parties signed the delivery-acceptance act on 8 January 2010, saying that the works were completed on 25 December 2009 and the cost of works made up 187 119 Lari. Thus, the actual cost of works, and presumably, the volume of works were reduced (by approximately 135 000 Lari). However, the procurement materials do not contain any document or information evidencing the circumstances which caused these changes.

**Tender Package No SB/IDP/CW/17-2009****Object of the tender –**

**Lot No1. Repairs to the former blood transfusion station at Tamar Mepe St. in Gori Town and the former dormitory of Gori University at Tskhinvali highway.**

**Brief description:**

The text of the tender documentation and the tender documentation were approved on 11 February 2009. The tender was announced on 13 February 2009.

It should be noted that a number of such requirements which do not directly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. It should also be noted that rather high requirement was set for the work experience. In particular, a bidding company shall have the turnover of construction works worth of **12 900 000 Lari**.
- b) Information on the qualification of a bidding company's personnel, including the requirement that a project **manager shall have at least 10-year experience of working in the projects of similar type**. It should be noted that the legislation concerning construction does not provide for such restrictions for allowing access of a person to construction works and determining its qualification. As regards fiscal benefit, one can hardly imagine a fiscal motive for the refusal to a bidding company offering a low price because its manager has, say, 8-year experience of performing similar works.
- c) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

**The estimated cost of works comprised 1 496 316Lari.**

Three companies participated in the tender and proposed the following prices:

1. Black Sea Group Ltd – 1397804 Lari
2. **New Energy Ltd – 1129071 Lari;**
3. **Block Georgia Ltd – 922594 Lari;**

Later, the examination of cost estimates revealed that some errors were made in the calculation of the tender price of New Energy Ltd. In reality, the tender price comprised **1 276 929 Lari**.

**The winner in the tender was New Energy Ltd with the tender proposal worth of 1 192 071 Lari, which comprised 79 percent of the estimated cost of procurement.**

The contract was signed on 16 March 2009.

The deadline for the completion of works was set on 23 August 2009.

The technical supervision on the construction works was performed by Davit Giorgibiani.

On 17 June 2009, i.e. six days prior to the deadline specified in the contract, the addendum to this contract was signed, increasing the cost of contract from 1192071 Lari by 44847 Lari to 1236918 Lari. The ground for the amendment, as quoted, was the revision of the volumes of construction works, which was proved by representatives of engineering design organization, contractor, MDF and local municipality. However, the procurement documentation does not contain a document evidencing the mentioned circumstances. By this amendment the tender cost of works increased by 3 percent ( $44847/1192071*100=3\%$ ). The amendment also extended the deadline for the completion of works to 15 September 2009.

It is important to note that the low amount of the change proves that this is not an illegal tender but an imperfect preparation of the public procurement.

As the deadline for the completion of works is 15 September, the additional documentation, certifying the completion of works and corresponding payments, should be requested for the further scrutiny.

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 14 September 2009, the contract was amended for the second time and extended the postponed the deadline for the completion of works to 15 November.

On 12 November 2009, the contract was amended for the third time, extending the deadline for the completion of works until 28 December 2009. The grounds for the amendment were the change of the design of construction works. In particular, the reconstruction of a hall on the ground floor of a dormitory into living apartments, on the basis of the request from the local municipality.

On 24 November 2009, the contract was amended for the fourth time on the same grounds as did the amendment of 12 November 2009. It is incomprehensible why two amendments were made on one and the same grounds. By the amendment of 24 November 2009, the total cost of the contract increased from 1236918 Lari by 244643 Lari to 1481562 Lari. The amendment increased the tender cost of works by 20 percent ( $244643/1236918 *100=20\%$ ).

In the end, the cost of contract increased from 1192071 Lari to 1481562 Lari.

The amendment also extended the deadline for the completion of works to 28 February 2010.

By extending the deadline, the tender transformed into a multi-year tender. However, the materials do not include the agreement with the Georgian Ministry of Finance and Agency for Procurements, which is the breach of paragraph 1, article 9 of the Law.

It is also important to note that the cost estimate of increased price contains a number of such new types of works which are not essentially associated with the grounds for the above mentioned amendments. For example, paragraph 6 of the cost estimate did not envisage the type of work "removal of wooden floor" whereas the amendment envisages 11 081 Lari for this type of work, which amounts to an unacceptable and unwarranted/artificial increase of the cost of contract.

As the deadline for the completion of works is 28 February 2010, the additional documentation, certifying the completion of works and corresponding payments, should be requested for further scrutiny.

**The materials provided with the letter N669-g/10 dated 17 March 2010 reveal that on 25 February 2010 the contract on SB/IDP/CW/17-2009 was amended for the fifth time, extending the deadline for the completion of works to 30 April 2010.**

#### **Tender Package No SB/IDP/CW/18-2009**

##### **Object of the tender –**

**Lot No1. Repairs to the IDP Housing in the apartment house at 4 Danelia Str, in the kindergarten in the "EMU" factory area, hostel buildings No1, 2 and 3 and camps in Maltakva area in Poti Town.**

##### **Brief description:**

The text of the tender documentation and the tender documentation were approved on 11 February 2009. The tender was announced on 13 February 2009.

It should be noted that a number of such requirements which do not directly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. It should also be noted that a rather high requirement was set for the work experience. In particular, a bidding company was to have the turnover of construction works worth of **12 900 000 Lari**.
- b) Information on the qualification of a bidding company's personnel, including the requirement that a project manager shall have at least **10-year experience of working in the projects of similar type**. It should be noted that the legislation concerning construction does not provide for such restrictions for allowing access of a person to construction works and determining its qualification. As regards fiscal benefit, one can hardly imagine a fiscal motive for the refusal to a bidding company offering a low price because its manager has, say, 8-year experience of performing similar works.

- c) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

**The estimated cost of works comprised 1 491 847 Lari.**

Six companies participated in the tender and proposed the following prices:

1. Dagi Ltd - 1 400 165 Lari;
2. Akhali Mtvare Ltd - 1 359 941 Lari
3. New Energy Ltd - 1 403 714 Lari;
4. Block Georgia Ltd - 1 479 419 Lari;
5. Khidi Ltd - 1 489 999 Lari;
6. Sani Ltd - 1 268 188 Lari.

It is important to note that the Tender Commission disqualified Sani Ltd on two grounds: 1. the failure to submit a letter certifying the availability of a credit line of 600 000 Lari or the readiness of a bank to open it in case the company wins; 2. the failure to submit a certificate on the absence of an ongoing bankruptcy procedure, issued by an authorized body.

With regards to the first ground, it should be noted that a bidding company shall submit a certificate on already available credit line or a letter on the readiness of a bank to open a credit line **provided that company meets corresponding requirements**. The second condition strips this qualification requirement of a real chance. As it is well known, a credit line is a bank product. Therefore, if a client meets the requirements specified by the bank, a credit line opens without any additional factual circumstances. Therefore, such a qualification requirement is entirely illogical and lacks any sense.

It should also be noted that according to subparagraph (i), paragraph 4, article 12 of the Law of Georgia on Public Procurements, a procuring entity can beforehand define those requirements, which are not subject to further clarification. In this particular case such a qualification requirement is not indicated in the announcement or tender documentation. Therefore, pursuant to paragraph 3, article 15 of the Law of Georgia on Public Procurements, the Tender Commission does not disqualify a tender proposal (in case it includes inconsistencies) that does not materially change or contradict the essence of the requirements stated in the tender documentation, or correction of which does not affect the essence of the tender documentation, except for the requirements specified in subparagraph (i), paragraph 4, article 12 and subparagraph (m), paragraph 3, article 14. Since the above indicated qualification requirements were not specified in accordance with subparagraph (i), paragraph 4, article 12 and subparagraph (m), paragraph 3, article 14, the Tender Commission could clarify that particular inaccuracy. As a result, the state funds would have been spent reasonably.

As regards the second ground, a bidding company submitted a letter on its solvency from a relevant court, which is indicated by this court itself. Therefore, according to paragraph 3, article 15 of the Law of Georgia on Public Procurements, the Tender Commission could avoid the disqualification of the bidding company and clarify this information with the bidding company.

It is very important to underline that the tender price of the disqualified company was 1 268 188 Lari, less by 132 000 Lari than the price of the winner's tender proposal.

Akhali Mtvare Ltd was disqualified for the failure to submit in due time the contracts and delivery-acceptance acts certifying its work experience. It should be noted that the Tender Commission requested itself the information on several such contracts. It should also be underlined here that pursuant to paragraph 4, article 15 of the Law of Georgia on Public Procurements, the Tender Commission disqualifies a bidding company only in case when there is a discrepancy between the qualification requirements and submitted data. In this particular case in the initial information, provided by the Ministry of Internal Affairs, such a discrepancy was not observed, however, the commission, for unknown reason, paid its attention to the quality of the performance of the contract and relationship between the parties, which could not be the subject of the commission's discussion. The commission, therefore, asked additional information on other contracts, which the company failed to provide.

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**The winner in the tender was Dagi Ltd with the tender proposal worth of 1 399 991 Lari.**

It is very important to note that the tender proposal of Dagi Ltd as well as the contract signed with it, envisaged the following types of works:

1. Residential houses at 4 Danelia Str – 410 831 Lari;
2. Kindergarten in the EMU - 155 320 Lari;
3. Hostel buildings No1 - 160 559 Lari;
4. Hostel buildings No 2 - 73 741 Lari;
5. Hostel buildings No 3 - 80 746 Lari;
6. Camps - 518 792 Lari.

The total cost of works comprised **1 399 991 Lari**.

**The contract with the total value of 1 399 991 Lari was signed on 30 April 2009. On 14 August 2009, the addendum to the above contract was signed, increasing the cost of contract by 92 902 Lari to 1 492 894 Lari. It is important that the type of works concerning the camps were removed from the procurement upon the request of the Poti Mayor's office. In fact, by decreasing the types of works envisaged by the contract, the cost of the contract increased by 612 000 Lari. The actual cost of works envisaged by the tender comprised 881 199 Lari (1399991-518792=881199). Thus, comparing the actual tender price by types of works, the cost of works increased by 70 percent (612 000/881 199\*100=70%).**

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. Such circumstances include the instances when in the process of implementation the volumes of certain works are clarified or the replacement of identical though same quality materials is needed. Such changes cannot be regarded of essential nature.

Pursuant to the same provision, an unwarranted decrease or elimination from the contract of types of works envisaged in the tender is prohibited.

Bearing in mind all the above mentioned it can be said that the procurement was imperfect and illegal.

As the deadline for the completion of works is 7 October 2009, the additional documentation, certifying the completion of works and corresponding payments, should be requested for the further scrutiny.

**In the letter #g-04/04-09 dated 16 October 2009, GYLA requested the public information on the completion of works. With the letter #3639-g/04 of 24 November 2009, the MDF provided two addenda to the contract:**

1. The above mentioned contract was amended on 22 September 2009, increasing the cost of contract from 1 492 894 Lari by 13387 Lari to 1506281 Lari. The ground for the amendment, as quoted, was the additional works having emerged in the course of the implementation of works, which was certified by the engineering design organization. It should however be noted that the materials do not provide any document evidencing the circumstances.

The deadline for the completion of works was also postponed to 7 November.

2. On 5 November 2009, i.e. two days earlier of the expiry of the deadline for the completion of works, the above mentioned contract was amended for the third time, increasing the cost of contract from 1506281 by 16941 Lari and decreasing by 52826 Lari, finally comprising 1470396 Lari. The ground for the amendment, as quoted, was the additional works having emerged in the course of the implementation of works while for the decrease – the removal of sewerage system works from the contract. All these were certified by the engineering design organization and local municipality. It should however be noted that the materials do not provide any document evidencing the circumstances.

**The deadline for the completion of works was also postponed to 22 November.**

The second and third amendments did not actually alter the 70 percent increase resulting from the first amendment, leaving it the same.

The only thing that changed was the term for the completion of works. The final deadline was set on 22 November.

The materials provided with the MDF's letter of 24 November 2009 lacked again the documentation on the final completion and delivery-acceptance of works.

With the letter #g-04/99-10 dated 20 January 2010, GYLA applied for the public information concerning the completion of works. With the letter #379-g/10 of 15 February 2010, the MDF provided an addendum of 1 December 2009 to the contract:

According to the amendment, the total cost of contract decreased from 1470396 Lari by 264073 Lari to 1206322 Lari. This was the fourth amendment since the execution of the contract on 30 April 2009 until its completion. The amendments either substantially increased or decreased the cost of contract. The analysis of the provided materials revealed that in most cases, the cost and volumes which increased by changes were again decreased thereafter, often to a lower level than the amounts specified in the tender documentation.

For example, the volume of the type of work - installation of laminate flooring - in the high-rise apartment building at 4 Danelia Street in Poti town was defined in the tender documentation as 2124 square meters. Thereafter, by an amendment/addendum of 14 August 2009, the volume increased by 200 square meters to 2324 square meters. This increase was also confirmed by defects act of unclear origin and date, additionally provided by the MDF, which was signed by a chief engineer of Architecturis Ofisi Ltd. Thereafter, by the amendment on 1 December 2009, the volume of work of the same type in the above mentioned building was decreased by 360,2 square meters to 1963,8 square meters, i.e. the volume of works to be performed in this building was actually smaller than it was specified in the tender documentation before the increase. That means that the increase and the reference to Defects Acts as to grounds for the increase were absolutely unfounded and unjustified. This example and materials provided by them shows that the amendments were mostly unsubstantiated.

On 2 December 2009, the delivery-acceptance act was drawn up saying that the implementing entity completed the works on 22 November 2009. However, despite double-checking, the materials did not show when the MDF received the notification on the completion of works from the company.

#### **Tender Package No SB/IDP/CW/19-2009**

##### **Object of the tender –**

**Lot No1. Repairs to the IDP housing in the kindergarten at No 222 Mshvidoba St. in the citrus farm at No 52 Stalin St. in the carpet factory at No105 Mshvidoba St. houses No 1 and 2 and repair shop at No26 Urudia St. in Senaki Town. SB/IDP/CW/19-2009-L1**

**Lot 2. Repairs to the IDP housing in buildings No1 and 2 at No27 Samtredia St, Schools No1and 2 at No112 Rustaveli St. in Senakli Town. SB/IDP/CW/19-2009-L2**

**Lot 3. Repairs to the IDP housing in the hotel Kolkheti, building No2, children's and railway company sanatoriums in Senaki Town. SB/IDP/CW/19-2009-L3**

##### **Brief description:**

The text of the tender documentation and the tender documentation were approved on 10 February 2009. The tender was announced on 13 February 2009.

It should be noted that a number of such requirements which do not directly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **10 500 00 Lari for Lot 1; 10 200 000 Lari for Lot 2 and 16 200 000 Lari for Lot3.**
- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in

mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

- c) Information on the qualification of a bidding company's personnel, including the requirement that a project manager shall have at least 10-year experience of working in the projects of similar type. It should be noted that the legislation concerning construction does not provide for such restrictions for allowing access of a person to construction works and determining its qualification. As regards fiscal benefit, one can hardly imagine a fiscal motive for the refusal to a bidding company offering a low price because its manager has, say, 8-year experience of performing similar works.

The estimated cost of works comprised **1 223 830 Lari**, however, the estimated cost per Lot was unknown. One should also assume, that the given data is wide of the mark and there is a mistake in the report on the tender.

Six companies participated in the tender and proposed the following prices:

1. Sani Ltd – Lot 1 – 903328 Lari ; Lot 2 – 904412 Lari; Lot 3 – 1675551 Lari;	4. Block Georgia Ltd – Lot 1 – 816612 Lari ; Lot 2 – 894204 Lari; Lot 3 – 1615436 Lari;
2. Dagi Ltd – Lot 1 – 1021223 Lari ; Lot 2 – 1136660 Lari; Lot 3 – 1905885 Lari;	5. New Energy Ltd – Lot 1 – 758774 Lari ; Lot 2 – 801452 Lari; Lot 3 – 1424621 Lari;
3. VIP Design Ltd – Lot 3 – 2099204 Lari;	6. Black Sea Group Ltd – Lot 1 – 952558 Lari ; Lot 2 – 950369 Lari; Lot 3 – 1771927 Lari.

The winner in the tender was New Energy Ltd with the contractual value for Lot 1 – 761074 Lari; Lot 2 – 801452 Lari; Lot 3 – 1424621 Lari. As the estimated costs by Lots are incorrect, it is impossible to compare the winner's proposal with them.

**Lot 1** – The contract was signed on 16 March 2009.

**Lot 1** – The contract was signed on 23 August 2009.

**Lot 1** – The technical supervision of construction works is carried out by Davit Karkarashvili.

It is important to note that with the amendment to the contract on 19 August 2009, i.e. four days prior to the expiration of the deadline specified in the contract, the tender price of the contract increased from 761074 Lari by 198806 Lari to 959880 Lari. The ground for the amendment was, as quoted, the revision of the volume of works, which was certified by representatives of the engineering design organization. However, the materials do not provide any document evidencing the circumstances. The cost of procurement increased by about 26 percent ( $198806 / 761074 *100=26\%$ ).

The deadline for the completion of works was also postponed to 22 November by the amendment.

On 14 September 2009 the contract was amended again postponing the deadline for the completion of works to 15 October 2009.

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 12 October 2009, the contract was amended for the third time increasing the cost of contract from 959880 Lari by 392638 Lari to 1352518 Lari. The grounds for the amendment, as indicated, were the revision of the volume of works, which was certified by representatives of the engineering design organization. However, the materials do not provide any document evidencing the circumstances. The cost of procurement increased by about 78 percent ( $591444 / 761074 *100=78\%$ ).

It is absolutely incomprehensible how those two amendments were made on the same grounds and the cost increased.

By the amendment the deadline for the completion of works was extended to 30 November 2009.

On 26 November 2009, the contract was amended for the fourth time increasing the cost of contract by 14820 Lari to 1367338 Lari, and extending the deadline for the completion of works to 20 December 2009.

**On 23 December 2009, the contract was amended for the fifth time slightly decreasing the cost of works to 1361629 Lari.**

On 28 December 2009, the parties signed the delivery-acceptance act, saying that the works were completed on 20 December 2009.

**Lot 2** – The contract was signed on 16 March 2009.

**Lot 2** – The deadline for the completion of works was set on 23 August 2009.

**Lot 2** – The technical supervision of construction works was carried out by Davit Karkarashvili.

It is important to note that on 6 August 2009 the contract was amended, increasing the tender price of the contract from 801452 Lari by 335637 Lari to 1137089 Lari. The ground for the amendment, as quoted, was the revision of the volumes of construction works, which was proved by representatives of engineering design organization. However, the procurement documentation does not contain a document evidencing the mentioned circumstances. The cost of procurement increased by about 42 percent ( $335637/801452 * 100 = 42\%$ ).

The amendment also extended the deadline for the completion of works to 30 September 2009.

On 14 September 2009, the contract was amended again, extending the deadline for the completion of works to 30 October 2009.

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 30 October 2009, the contract was amended for the third time increasing the cost of contract from 1137089 Lari by 91284 Lari to 1228373 Lari, which was proved by representatives of engineering design organization. However, the procurement documentation does not contain a document evidencing the mentioned circumstances. In total, the tender price of the contract increased by 426921 Lari. The cost of procurement increased by about 53 percent ( $426921 / 801452 * 100 = 53\%$ ).

It is very important to note that the amendment was made in regards to the same types of works which were increased both in volume and cost by the amendment of 6 August 2009 (for example, position 1 of the construction works of rehabilitation to residential building of the professional educational center in Senaki. By the first amendment the existing 236 square meters increased up to 3200 square meters while the same position further increased by 185 square meters under the amendment of 30 October 2009). Or vice versa, by the amendment of 6 August 2009, volumes of certain types of works decreased whereas by the amendment of 30 October 2009, the volumes and cost increased (for example, position 10 of the construction works of rehabilitation to residential building of the professional educational center in Senaki. The existing door size of 344 square meters decreased first to 269 square meters but then increased to 389 square meters). All the above said clearly indicates that amendments were groundless and procurement procedures grossly violated.

The deadline for the completion of works was also postponed by the amendment to 28 February 2010. It is important to note that with this change the procurement became a multi-year; although the materials do not evidence the consent of the Georgian Ministry of Finance and Agency for Procurements on multi-year procurement, which is the breach of paragraph 1, article 9 of the Law of Georgia on Public Procurements.

On 28 January 2010, the contract was amended for the fourth time increasing the cost of contract from 1228373 Lari by 160143 Lari to 1388516 Lari. The ground for the increase was, as quoted, additional reconstruction works. However, the procurement documentation does not contain a document evidencing the mentioned circumstances. In total, the tender price of the contract increased by 587064 Lari. The cost of procurement increased by about 73 percent ( $587064 / 801452 * 100 = 73\%$ ).

The materials provided with the letter N669-g/10 dated 17 March 2010 reveal that on 26 February 2010 the MDF received a notification from New Energy Ltd regarding the completion of works on **SB/IDP/CW/19-2009 Lot N2**.

**On 10 March 2010, the contract was amended for the fifth time. Under this amendment the cost of works decreased from 1388516 Lari by 204585 Lari to 1183931 Lari, on the basis of clarified work volumes after the completion of works. However, it should be noted that the procurement materials do not contain documentation (including cost estimate) evidencing the necessity of making this change.**

**On 12 April 2010, the parties drew up a delivery-acceptance act on SB/IDP/CW/19-2009 Lot N2 saying that the works were completed on 28 February 2010.**

**Lot 3** – The contract was signed on 16 March 2009.

**Lot 3** – The deadline for the completion of works was set on 23 August 2009.

**Lot 3** – The technical supervision of construction works was carried out by Davit Karkarashvili.

It is important to note that on the basis of an explanatory note of a MDF employee, on 12 August 2009, the contract was amended, increasing the tender price of the contract from 1424621 Lari by 250030 Lari to 1674651 Lari. The ground for the amendment, as quoted, was the revision of the volumes of construction works, which was proved by representatives of engineering design organization and Senaki municipality. However, the procurement documentation does not contain a document evidencing the mentioned circumstances. The cost of procurement increased by about 18 percent ( $250030/1424621*100=18\%$ ).

On 14 September 2009, i.e. after the deadline for the completion of works on Lot 3 had expired on 23 August and the company was to be penalized, the contract was amended and the deadline for the completion of works postponed to 23 October 2009.

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 12 October 2009, the contract was amended decreasing the cost of contract by 930166 Lari to 744484 Lari. In reality, however, the cost of works increased.

In particular, Lot 3 includes the following rehabilitation objects:

1. Kolkheti in Menji – 873924 Lari;
2. Children's Sanatorium in Menji – 221190 Lari;
3. Menji N2 (small house) at Gvinjilia Str. N1 – 54174 Lari;
4. Railways Sanatorium in Menji – 279491 Lari;
5. Building N2 at Gvinjilia Str. N3 – 245872 Lari.

The above works were slimmed down to exclude, without any substantiation, works N1 and N2; however, works N3, N4 and N5 increased by 164946 Lari. The tender price in these types of works was 329507 Lari. The amendment of 12 August 2009, increased this price by 250030 Lari, while the amendment of 12 October, increased it by 164946 Lari, as mentioned above. In total the tender price increased by 414976 Lari. The cost of procurement increased by about 125 percent ( $414976 / 329507 *100=125\%$ ). It should be noted that the increase of such a scale in the cost of works, as observed in case of Lot 3, hardly exists in practice.

The amendment also changed the date of the completion of works, postponing it to 30 November 2009.

On 2 December 2009, the contract was amended for the fourth time and the cost of work decreased insignificantly in those positions which were increased under the previous amendments.

On 11 December 2009, the parties signed the delivery-acceptance act on the completion of works on 30 November 2009.

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. Such circumstances include the instances when in the process of implementation the volumes of certain works are clarified or the replacement of identical though same quality materials is needed. Such changes cannot be regarded of essential nature. The provided materials did not make it evident whether such circumstances existed, but such a big amount of change (78%, 73% and 125%) provides the ground to assume that they existed.

#### **Tender Package No SB/IDP/CW/20-2009**

##### **Object of the tender –**

##### **Lot No1. Repairs to the flats in the former commissariat building in Gardabani town.**

###### **Brief description:**

The text of the tender documentation and the tender documentation were approved on 12 February 2009. The tender was announced on 14 February 2009.

It should be noted that a number of such requirements which do not directly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this

requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **5 400 00 Lari**.

- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.
- c) The requirements set forth in the law for the tender announcement and tender documentation were not observed. Paragraph 4, article 12 and paragraph 3, article 14 of the law of Georgia on Public Procurements, precisely define those information and requirements which shall be submitted in detail. In this particular case, the tender announcement contains only part of those qualifying requirements which are given in the list of basic data of tender documentation. This is a gross violation of procedures for the conduct of bidding.

#### **The estimated cost of works comprised 374839 Lari.**

Nine companies participated in the tender.

1. Sani Ltd – 309428 Lari ;
2. Dagi Ltd – 212700 Lari;
3. Archstudio Peristyle Ltd – 205571 Lari;
4. Berdi Ltd – 232756 Lari;
5. Passati Ltd – 222803 Lari;
6. Blco Georgia Ltd – 231984 Lari;
7. Mshenebeli Ltd – 255462 Lari;
8. Algeti Ltd – 243876 Lari;
9. Geokolori Ltd – 228397 Lari.

The winner in the tender was Archstudio Peristyle Ltd with the contract price of 205571 Lari. The contract was signed on 20 March 2009.

#### **The value of tender proposal comprised 54 percent of the estimated cost of the procurement.**

Works were to be completed on 20 June 2009.

Technical supervision of the construction works was carried out by Kakha Bolkvadze.

It is important to note that on 17 June August 2009, the contract was amended, increasing the tender price of the contract from 205571 Lari by 41382 Lari to 246954 Lari. The ground for the amendment, as quoted, was the revision of the volumes of construction works, which was proved by representatives of engineering design organization. However, the procurement documentation does not contain a document evidencing the mentioned circumstances. The cost of procurement increased by about 20 percent ( $41382/205571*100=20\%$ ).

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. Such circumstances include the instances when in the process of implementation the volumes of certain works are clarified or the replacement of identical though same quality materials is needed. Such changes cannot be regarded of essential nature. The provided materials did not make it evident whether such circumstances existed, but such a big amount of change (20%) provides the ground to assume that they existed. It is also noteworthy that in order to gain advantage, the company submitted the tender price which comprised 54 percent of the estimated cost of procurement.

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 1 July 2009 the parties signed the delivery-acceptance act.

It is noteworthy that neither the delivery-acceptance act nor any other document on the procurement bears the date of the completion of works. The provided documentation only shows that the delivery-acceptance act was signed on 1 July 2009, i.e. 10 days later than it was planned.

### **Tender Package No SB/IDP/CW/21-2009**

#### **Object of the tender –**

#### **Lot No1. Repairs to the four-story buildings N1 and N2 in Kopitnari military settlement in Kutaisi Town.**

##### Brief description:

The text of the tender documentation and the tender documentation were approved on 12 February 2009. The date of the announcement of the tender – 30 January – is indicated incorrectly in the report on the tender.

It should be noted that a number of such requirements which do not directly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **9 000 00 Lari**.
- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.
- c) The requirements set down in the law for the tender announcement and tender documentation were not observed. Paragraph 4, article 12 and paragraph 3, article 14 of the law of Georgia on Public Procurements, precisely define those information and requirements which shall be submitted in detail. In this particular case, the tender announcement contains only part of those qualifying requirements which are given in the list of basic data of tender documentation. This is a gross violation of procedures for the conduct of bidding.

#### **The estimated cost of works comprised 1055957 Lari.**

Four companies participated in the tender.

1. **Oda Ltd – 603755 Lari ; (the protocol shows the wrong figure - 309428 Lari)**
2. Geokolori Ltd – 831563 Lari; (the protocol shows the wrong figure - 205571 Lari)
3. Dagi Ltd – 881751 Lari; (the protocol shows the wrong figure - 232756 Lari)
4. Block Georgia Ltd - 860932 Lari; (the protocol shows the wrong figure - 222803 Lari)

#### **The winner in the tender was Oda Ltd with the contract price of 603755 Lari. The value of tender proposal comprised 57 percent of the estimated cost of the procurement.**

The contract was signed on 23 March 2009.

Works were to be completed on 23 September 2009.

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 9 September 2009, the contract was amended, increasing the tender price of the contract from 603755 Lari by 167278 Lari to 771034 Lari. The ground for the amendment, as quoted, was the revision of the volumes of construction works, which was proved by representatives of engineering design organization. However, the procurement documentation does not contain a document evidencing the mentioned circumstances. The cost of procurement increased by about 28 percent ( $167278/603755*100=28\%$ ).

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract

signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. Such circumstances include the instances when in the process of implementation the volumes of certain works are clarified or the replacement of identical though same quality materials is needed. Such changes cannot be regarded of essential nature. The provided materials did not make it evident whether such circumstances existed, but such a big amount of change (28%) provides the ground to assume that they existed.

On 6 October 2009 the parties signed the delivery-acceptance act. It is noteworthy that neither the delivery-acceptance act nor any other document on the procurement indicates the date of the completion of works. The provided documentation only shows that the delivery-acceptance act was signed on 6 October 2009, i.e. 14 days later than the scheduled date of 23 September.

#### **Tender Package No SB/IDP/CW/22-2009**

##### **Object of the tender –**

##### **Lot No1. Repairs to four-story houses No 84,90,91, 92, 96 in the military settlement in Khoni Town.**

Brief description:

The text of the tender documentation and the tender documentation were approved on 13 February 2009. The tender announcement was published on 14 February.

It should be noted that a number of such requirements which do not directly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **16 200 00 Lari**.
- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.
- c) The requirements set down in the law for the tender announcement and tender documentation were not observed. Paragraph 4, article 12 and paragraph 3, article 14 of the law of Georgia on Public Procurements, precisely define those information and requirements which shall be submitted in detail. In this particular case, the tender announcement contains only part of those qualifying requirements which are given in the list of basic data of tender documentation. This is a gross violation of procedures for the conduct of bidding.

##### **The estimated cost of works comprised 3035000 Lari.**

Two companies participated in the tender.

1. Spetsmsheni 99 Ltd- 2358266 Lari
2. Dagi Ltd – 1682575 Lari.

The winner in the tender was Dagi Ltd with the contract price of 1682705 Lari. The contract was signed on 23 March 2009. **The value of tender proposal comprised 55 percent of the estimated cost of the procurement.**

Works were to be completed on 25 November 2009.

The technical supervision on the construction works was performed by Kakha Bolqvadze.

On 17 August 2009, the contract was amended, increasing the tender price of the contract from 1682705 Lari by 796762 Lari to 2479467 Lari. The ground for the amendment, as quoted, was the revision of the volumes of construction works. However, the procurement documentation does not contain a document evidencing the mentioned circumstances. The cost of procurement increased by about 47 percent ( $796762/1682705 \times 100 = 47\%$ ).

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. Such circumstances include the instances when in the process of implementation the volumes of certain works are clarified or the replacement of identical though same quality materials is needed. Such changes cannot be regarded of essential nature. The provided materials did not make it evident whether such circumstances existed, but such a big amount of change (47%) provides the ground to assume that they existed. It is also noteworthy that in order to gain advantage, the company submitted the tender price which comprised **55 percent** of the estimated cost of procurement.

As the deadline of 25 November 2009 for the completion of works has already expired, the additional documentation, certifying the completion of works and corresponding payments, should be requested for further scrutiny.

**After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 4 December 2009, the parties signed the delivery-acceptance act. According to the delivery-acceptance act, the rehabilitation works completed on 15 November.**

#### **Tender Package No SB/IDP/CW/23-2009**

##### **Object of the tender –**

**Lot N01. Repairs to the IDP housing in factory buildings No1,2,3 and 4 in Zeda Etsera Village of Zugdidi District, outpatient clinic and dormitory in the college settlement (buildings no1,2,3,4, and 5). SB/IDP/CW/23-2009-L1**

**Lot No2 Repairs to the IDP housing in two-entrance houses No1,2,3,4,5,6,7,8,10 and 11 in the settlement of Zeda Etsera Village in Zugdidi District. SB/IDP/CW/23-2009-L2**

**Lot No3. Repairs to the IDP housing in the administrative building, pioneer's camp buildings No1,2, and 3, club and diner in Chkadua Village of Zugdidi District. SB/IDP/CW/23-2009-L3**

**Lot No4. Repairs to the IDP housing in the dormitories of the boarding school in Akhalsopeli Village of Zugdidi District. SB/IDP/CW/23-2009-L4**

**Lot No5. Repairs to the IDP housing in buildings No1 and 2 of the vocational school in Ingiri Village of Zugdidi DistrictSB/IDP/CW/23-2009-L5**

**Lot No6. Repairs to the IDP housing in buildings No 1,2, and 3 of the boarding school and buildings No1 and 2 of the paint factory in Ingiri Village of Zugdidi TownSB/IDP/CW/23-2009-L6**

##### **Brief description:**

The text of the tender documentation and the tender documentation were approved on 20 February 2009. The tender was announced on 21 February 2009.

It should be noted that a number of such requirements which do not directly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **9 000 00 Lari for Lot 1; 9 900 000 Lari for Lot 2; 9 000 000 Lari for Lot 3; 5 600 000 Lari for Lot 4; 8 100 000 Lari for Lot 5 and 7 200 000 Lari for Lot 6.**

- b) Information on the qualification of a bidding company's personnel, including the requirement that a project **manager shall have at least 10-year experience of working in the projects of similar type**. It should be noted that the legislation concerning construction does not provide for such restrictions for allowing access of a person to construction works and determining its qualification. As regards fiscal benefit, one can hardly imagine a fiscal motive for the refusal to a bidding company offering a low price because its manager has, say, 8-year experience of performing similar works.
- c) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

The procurement materials do not contain the information about the estimated cost of procurement.

Six companies participated in the tender and proposed the following prices:

- |  |   |
|--|---|
| 1. Aliansi Ltd –<br>Lot N5 – 1139516 Lari ;  | 5. Block Georgia Ltd –<br>Lot N1 – 819993 Lari;<br>Lot N2 – 942603 Lari;<br>Lot N3 – 795232 Lari;<br>Lot N4 – 363605 Lari;<br>Lot N5 – 688137 Lari;<br>Lot N6 – 551983 Lari |
| 2. Tsalenjikha Road Department Ltd –<br>Lot N1 – 998930 Lari;<br>Lot N2 – 1276550 Lari;<br>Lot N3 – 905270 Lari.   |   |
| 3. Industria 2 Ltd –<br>Lot N4 – 374902 Lari;<br>Lot N5 – 696362 Lari;   | 6. Sani Ltd –<br>Lot N1 – 871385 Lari;<br>Lot N2 – 1073842 Lari;<br>Lot N4 – 514929 Lari;<br>Lot N6 – 758958 Lari.  |
| 4. New Energy Ltd –<br>Lot N1 – 754736 Lari;<br>Lot N2 – 1149632 Lari;<br>Lot N3 – 826965 Lari;<br>Lot N4 – 466818 Lari;<br>Lot N5 – 700807 Lari;<br>Lot N6 – 732813 Lari; |   |

The winner in the tender was Block Georgia Ltd with the contractual value of –  
Lot N1 – 823652 Lari;

Lot N2 – 942308 Lari;  
Lot N3 – 795259 Lari;  
Lot N4 – 363618 Lari;  
Lot N5 – 688212 Lari;  
Lot N6 – 551983 Lari

Lot N1 – The contract was signed on 26 March 2009.

Lot N1 – Works were to be completed on 30 August 2009.

The technical supervision on the construction works was performed by Vazha Kirtava.

On 19 August 2009, the contract was amended, decreasing the tender price of the contract from 823652 Lari by 154995 Lari to 668656 Lari. The ground for the amendment, as quoted, was the revision of the volumes of construction works, which was confirmed by representatives of the engineering design organization and Zugdidi municipality.

It is very important to note that Lot N1 included 12 types of construction works of which 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> types were removed under the amendment.

Thus, the tender cost of the remaining types of works, in fact, increased from 498057 Lari by 170600 Lari to 668656 Lari. Accordingly, the cost of procurement increased by about 26 percent 170600 /498057 \*100=26%).

What constituted the grounds for the removal of the rehabilitation of external networks cannot be figured out from either the explanatory note of an MDF employee or the procurement materials.

The term for the completion of work was also extended to 15 September 2009.

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 29 September 2009, the parties signed the delivery-acceptance act. According to the delivery-acceptance act, the rehabilitation works completed on 15 September 2009.

Lot N2 – The contract was signed on 26 March 2009.

Lot N2 – Works were to be completed on 30 August 2009.

The technical supervision on the construction works was performed by Vazha Kirtava.

On 19 August 2009, the contract was amended, decreasing the tender price of the contract from 942308 Lari by 6972 Lari to 935336 Lari. The ground for the amendment, as quoted, was the revision of the volumes of construction works, which was confirmed by representatives of the engineering design organization and Zugdidi municipality.

It is very important to note that Lot N2 included 13 types of construction works of which 12<sup>th</sup> and 13<sup>th</sup> types, namely, residential house – 74391 Lari and external networks – 167325 Lari, were removed through the amendment.

Thus, the tender value of the remaining types of works, in fact, increased from 700592 Lari by 234744 Lari to 935336 Lari. Accordingly, the cost of procurement increased by about 34 percent ( $234744 / 700592 * 100 = 34\%$ ).

What constituted the grounds for the removal of the rehabilitation of external networks cannot be figured out from either the explanatory note of an MDF employee or the procurement materials.

The term for the completion of work was also extended to 15 September 2009.

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 29 September 2009, the parties signed the delivery-acceptance act. According to the delivery-acceptance act, the rehabilitation works completed on 15 September 2009.

Lot N3 – The contract was signed on 26 March 2009.

Lot N3 – Works were to be completed on 30 August 2009.

The technical supervision on the construction works was performed by Vazha Kirtava.

On 19 August 2009, the contract was amended, increasing the tender price of the contract from 795259 Lari by 231673 Lari to 1026932 Lari. The ground for the amendment, as quoted, was the revision of the volumes of construction works, which was confirmed by representatives of the engineering design organization and Zugdidi municipality.

It is very important to note that Lot N3 included seven types of construction works:

1. Administrative building of pioneer camp – 137555 Lari;
2. Building N1 of pioneer camp in the Chkadua village – 141756 Lari;
3. Building N2 of pioneer camp – 143389 Lari;
4. Building N3 of pioneer camp – 143131 Lari;
5. Club of pioneer camp – 23262 Lari;
6. Canteen of pioneer camp – 145027 Lari;
7. External networks – 61136 Lari.

Out from the above list, the 7<sup>th</sup> type of works (external networks - 61136 Lari) was entirely removed. Therefore, the tender cost of the remaining types of works increased from 734120 Lari by 292809 Lari to 1026929 Lari. Accordingly, the cost of procurement increased by about 40 percent ( $292809 / 734120 * 100 = 40\%$ ).

The term for the completion of work was also extended to 15 September 2009.

What constituted the grounds for the removal of the rehabilitation of external networks cannot be figured out from either the explanatory note of an MDF employee or the procurement materials.

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 29 September 2009, the parties signed the delivery-acceptance act. According to the delivery-acceptance act, the rehabilitation works completed on 15 September 2009.

Lot N4 – The contract was signed on 26 March 2009.

Lot N4 – Works were to be completed on 30 August 2009.

The technical supervision on the construction works was performed by Vazha Kirtava.

On 19 August 2009, the contract was amended, increasing the tender price of the contract from 363618 Lari by 147042 Lari to 510661 Lari. The ground for the amendment, as quoted, was the revision of the volumes of construction works, which was confirmed by representatives of the engineering design organization and Zugdidi municipality.

It is very important to note that Lot N4 included two types of construction works:

1. Boarding school of Akhalsopeli, Zugdidi District – 340465 Lari;
2. External networks of the boarding school of Akhalsopeli, Zugdidi District – 22703 Lari.

Out from the above works the second type of works (external networks of the boarding school of Akhalsopeli, Zugdidi District – 22703 Lari) was entirely removed. Therefore, the tender cost of the remaining types of works increased from 340465 Lari by 170196 Lari to 510661 Lari. Accordingly, the cost of procurement increased by about 50 percent ( $170196 / 340465 *100=50\%$ ).

What constituted the grounds for the removal of the rehabilitation of external networks cannot be figured out from either the explanatory note of an MDF employee or the procurement materials.

The term for the completion of work was also extended to 15 September 2009.

On 14 September 2009, the contract was amended for the second time extending the deadline to 15 October 2009.

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 29 October 2009, the parties signed the delivery-acceptance act. According to the delivery-acceptance act, the rehabilitation works completed on 15 October 2009.

Lot N5 – The contract was signed on 26 March 2009.

Lot N5– Works were to be completed on 30 August 2009.

The technical supervision on the construction works was performed by Vazha Kirtava.

On 19 August 2009, the contract was amended, increasing the tender price of the contract from 688212 Lari by 301334 Lari to 989546 Lari. The ground for the amendment, as quoted, was the revision of the volumes of construction works, which was confirmed by representatives of the engineering design organization and Zugdidi municipality.

It is very important to note that Lot N5 included three types of construction works:

1. Building N1 of the vocational school of the Ingiri village, Zugdidi – 282910 Lari;
2. Building N21 of the vocational school of the Ingiri village, Zugdidi – 374754 Lari;
3. External networks of the vocational school of the Ingiri village, Zugdidi – 30546 Lari.

Out from the above works the third type of works (external networks of the vocational school of the Ingiri village, Zugdidi – 30546 Lari) was entirely removed, while the cost of the remaining types of works increased by 331881 Lari. The cost of the remaining two types of works increased from 657664 Lari to 331881 Lari. Accordingly, the cost of procurement increased by about 50 percent ( $331881 / 657664 *100=50\%$ ).

What constituted the grounds for the removal of the rehabilitation of external networks cannot be figured out from either the explanatory note of an MDF employee, dated 17 August 2009, or the procurement materials.

The term for the completion of work was also extended to 15 September 2009.

On 14 September 2009, the contract was amended for the second time extending the deadline to 15 October 2009.

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 29 October 2009, the parties signed the delivery-acceptance act. According to the delivery-acceptance act, the rehabilitation works completed on 15 October 2009.

Lot N6 – The contract was signed on 26 March 2009.

Lot N6– Works were to be completed on 30 August 2009.

The technical supervision on the construction works was performed by Vazha Kirtava.

On 19 August 2009, the contract was amended, increasing the tender price of the contract from 644783 Lari by 324711 Lari to 969494 Lari. The ground for the amendment, as quoted, was the revision of the volumes of construction works, which was confirmed by representatives of the engineering design organization and Zugdidi municipality.

It is very important to note that Lot N6 included six types of construction works:

1. Paint factory in the Ingiri village, Zugdidi (Large building) – 161444 Lari;
2. Paint factory in the Ingiri village, Zugdidi (small building) – 21308 Lari;
3. Building N1 of the boarding school the Ingiri village, Zugdidi – 206951 Lari;
4. Building N2 of the boarding school the Ingiri village, Zugdidi – 198375 Lari;
5. Building N3 of the boarding school the Ingiri village, Zugdidi – 42794 Lari;
6. External networks of the boarding school the Ingiri village, Zugdidi – 13907 Lari.

Out from the above works the sixth type of works (external networks of the vocational boarding of the Ingiri village, Zugdidi – 13907Lari) was entirely removed, while the cost of the remaining five types of works increased by 338618 Lari. The cost of the remaining five types of works increased from 657664 Lari to 338618 Lari. Accordingly, the cost of procurement increased by about 52 percent ( $338618/657664*100=52\%$ ). It is important to note that the explanatory note of 17 August 2009 does not make any reference to the removal of the sixth type of works and the grounds for the removal.

The term for the completion of work was also extended to 21 September 2009.

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 21 September 2009, the contract was amended for the second time, decreasing the cost of works insignificantly to 961203 Lari.

On 5 October 2009, the parties signed the delivery-acceptance act. According to the delivery-acceptance act, the works completed on 21 September 2009.

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. Such circumstances include the instances when in the process of implementation the volumes of certain works are clarified or the replacement of identical though same quality materials is needed. Such changes cannot be regarded of essential nature. The provided materials did not make it evident whether such circumstances existed, but such a big amount of change (26%; 34%; 40%; 50%; 52%) provides the ground to assume that they existed.

#### **Tender Package No SB/IDP/CW/24-2009**

##### **Object of the tender –**

##### **Lot No1. Repairs to four-storied building and G unit of seven-storied building of Bazaleti sanatorium in Dusheti district.**

##### **Brief description:**

The text of the tender documentation and the tender documentation were approved on 20 February 2009. The tender announcement was published on 21 February.

It should be noted that a number of such requirements which do not directly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of 3 600 00 Lari.
- b) The requirements set down in the law for the tender announcement and tender documentation were not observed. Paragraph 4, article 12 and paragraph 3, article 14 of the law of Georgia on Public Procurements, precisely define those information and requirements which shall be submitted in detail. In this particular case, the tender announcement contains only part of those qualifying requirements which are given in the list of basic data of tender documentation. This is a gross violation of procedures for the conduct of bidding.

The estimated cost of works comprises 1266648 Lari.

Thirteen companies participated in the tender.

1. SSG Iberia Ltd – 226394 Lari ;
2. Dagi Ltd- 234726 Lari;
3. Mshenebeli Ltd- 225065 Lari;
4. Archstudio Peristyle Ltd- 183921 Lari;
5. Service Ltd – 198498 Lari;
6. Poni Ltd – 226404 Lari;
7. MK Ltd – 222285 Lari;
- 8. Nova Ltd- 170184 Lari;**
9. Nodo Ltd- 212775 Lari;
10. Block Georgia Ltd- 188666 Lari;
11. Sani Ltd – 196455 Lari;
12. Geokolori Ltd- 197072 Lari;
13. Passati Ltd- 176493 Lari;

The winner in the tender was Nova Ltd with the contract price of 171165 Lari. The contract was signed on 30 March 2009. **The price of tender proposal comprised 13 percent of the estimated cost of procurement. It is obvious that the estimated cost of procurement was defined incorrectly and the cost-estimate showed a wrong figure.**

The works were to be completed on 30 June 2009.

The technical supervision on the construction works was performed by Vazha Kirtava.

**On 10 June 2009, the contract was amended, increasing the tender price of the contract from 171165 Lari by 37028 Lari to 209218 Lari. The ground for the amendment, as quoted, was the revision of the volumes of construction works, which was confirmed by representatives of the engineering design organization and Dusheti municipality. However, the procurement documentation does not contain a document evidencing the mentioned circumstances. The cost of procurement increased by about 21 percent (37028/171165 \*100=21%).**

**The term for the completion of work was also extended to 31 July 2009.**

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. Such circumstances include the instances when in the process of implementation the volumes of certain works are clarified or the replacement of identical though same quality materials is needed. Such changes cannot be regarded of essential nature. The provided materials did not make it evident whether such circumstances existed, but such a big amount of change (**21%**) provides the ground to assume that they existed.

**It is important to note that on 7 August 2009, i.e. after the expiration of the deadline of 31 July 2009, for the completion of works, the contract was amended for the second time, decreasing the contract by 310 Lari to 205031 Lari.**

**On 12 August 2010, a delivery-acceptance act on the completion of works was signed. Both provided documents certify that the works were not completed on time. The provided materials do not show whether the delay in the completion of works was caused by violation of terms by the implementing entity or the acceptance of works by the purchaser.**

#### **Tender Package No SB/IDP/CW/25-2009**

#### **Object of the tender –**

**Lot No1. Repairs to the IDP housing in Mtskheta Town and the villages of Mukhrani, Saguramo and Tserovani in Mtskheta District (buildings No1 and 2 of the former hostel in Mtskheta Town; two-storied building in the Mukhrani village; five-storied building in the Saguramo village, two-storied building in the Tserovani village).**

Brief description:

The text of the tender announcement and the tender documentation were approved on 26 February 2009.

The tender announcement was published on 28 February.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **4 700 00 Lari**.
- b) The requirements set down in the law for the tender announcement and tender documentation were not observed. Paragraph 4, article 12 and paragraph 3, article 14 of the law of Georgia on Public Procurements, precisely define those information and requirements which shall be submitted in detail. In this particular case, the tender announcement contains only part of those qualifying requirements which are given in the list of basic data of tender documentation. This is a gross violation of procedures for the conduct of bidding.

#### **The estimated cost of works comprised:**

##### **Lot N1 - 439592 Lari.**

Sixteen companies participated in the tender and offered the following prices:

1. SSG Iberia Ltd – 461558 Lari;
2. Mshenebeli Ltd – 394198 Lari;
3. Archstudio Peristyle Ltd – 333702 Lari;
4. Poni Ltd – 366876 Lari;
5. Sani Ltd – 331079 Lari;
6. Geokolori Ltd – 392772 Lari;
7. MK Ltd – 452057 Lari;
8. Construction company Konstanta Ltd – 341108 Lari;
9. Service Ltd – 363166 Lari;
10. Nodo Ltd – 385866 Lari;
11. Block Georgia Ltd – 391417 Lari;
12. Monolitmsheni Ltd – 447371 Lari;
13. JSC Khuro – 333511 Lari;
- 14. Nova Ltd - 283276 Lari;**
15. AMA Ltd – 380057 Lari;
- 16. Passati Ltd - 271994 Lari;**

**The winner in the tender was Passati Ltd with the contract price of 271635 Lari. The price of tender proposal comprised 61 percent of the estimated cost of procurement.**

The contract was signed on 8 April 2009.

The works were to be completed on 10 June 2009.

**With the letter of 26 March 2009, the head of local administration of Mtskheta municipality requested the termination of the repairs to the two-storied house in the Mukhrani village because the building had been privatized by the Georgian Tradition Ltd through direct sale “on the basis of concrete selection.” It is noteworthy that by the 26<sup>th</sup> of March, the engineering design and cost-estimate documentation had already been purchased for this facility, the tender announced and relevant contract executed, though the facility was privatized under the ordinance of President of Georgia, dated 19 November 2008. Thus, the MDF carried out a number of procurement preparation measures and incurred related costs for a building that was privately owned.**

**It is noteworthy that the representatives of the design organization Arkservis Ltd (presumably, this is the company that prepared the cost-estimate documentation), the MDF, Passati Ltd and administrative body of Mtskheta municipality, clarified the volume of works. As a result the cost of contract increased from 236 131 by 351 475 Lari to 587 607 Lari. Accordingly, an agreement on the increase of the contract price was signed on 1 June 2009, pushing up the tender price by 148 percent ( $351475 / 236131 = 148\%$ ). One can understand that the works were complemented with new types of works but one can also clearly see an imperfect preparation of works and the development of absolutely inaccurate engineering design and cost-estimate documentation by the engineering design organization and moreover, the acceptance of these works by the MDF as if they were unflawed. It should be taken into account that the MDF did not apply a uniform standard to types of works to be performed in IDP housings regardless of initial conditions therein.**

However surprising it might seem, on 30 July 2009 (although the works were to be completed on 10 June under the contract), with the letter #1708 the Mtskheta municipality submitted an insisting demand from IDPs, which, if accommodated, implied the increase in the cost of works. New volumes and types of works were priced by Passati Ltd and then corrected (reduced) by the MDF. In the end, they increased by 220 236 Lari to 807 843 Lari. Accordingly, on 10 August 2009 the agreement was signed on the increase in the price of contract, rising the tender price by 37,4 percent ( $220236/587607*100=37,4\%$ ). In the end the tender price of the contract increased by 185 percent. It is important to note that the second amendment envisaged such types of additional works as the installation of suspended ceilings in toilets and bathrooms, tiling of walls in kitchens, tiling of floors in balconies, etc.

The above said is another proof that the engineering design and cost-estimate works were poorly performed. The volumes of works increased in such types that were not specified among the circumstances envisaged by article 398 of the Civil Code, extended with a number of work types which were not included in the tender documentation and were priced by Passati Ltd. The principle of competitiveness of the tender is actually violated.

**The deadline of 10 June 2009 for the completion of works under the contract was violated. With the amendment of 10 August 2009, the purchaser considered the breach of the deadline excusable and specified a new deadline of 15 October 2009.**

It is expedient to additionally request the documentation certifying the completion and the corresponding payment, for scrutiny.

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 2 October 2009, the contract was amended for the fourth time increasing the cost by 123013 Lari to 930856 Lari. In total, the tender price increased from 236131 Lari by 694725Lari, showing the increase of 294 percent in the tender price ( $694725 /236131*100=294\%$ ). By the amendment the deadlines for the positions 1 and 2 postponed to 5 November 2009 and for line items 3 and 4 to 15 November.

**The ground for the amendment was, as quoted, the revision of the volumes of works by representative of the MDF, Passati Ltd and administrative body of Mtskheta municipality.**

**On 19 November 2009, the contract was amended for the fifth time and the cost decreased insignificantly (by 815 Lari).**

On 24 November 2009, the parties signed a delivery-acceptance act saying that "the works were completed on 12 November whereas the works, under the contract, were to be completed by 5 November 2009. The company was therefore fined with 9300 Lari." We think that the application of such a sanction is too symbolic. Given that the deadline for the completion of works was not the 5<sup>th</sup> of November but 15<sup>th</sup> of October 2009 for the 3<sup>rd</sup> and 4<sup>th</sup> positions, the reference point for counting the fine for these positions should have been 15 October instead of 5 November. It should also be emphasized that no document can be found evidencing the completion of works and violation of the deadlines and the terms reflected in the delivery-acceptance act are conventional and their conformity with the reality cannot be proved.

#### Tender Package No SB/IDP/CW/26-2009

##### **Object of the tender –**

**Lot No1. Repairs to four-story, four-entry houses No 89, 97, 102, 104 in the military settlement in Khoni Town with the total area of 7462 m<sup>2</sup> - SB/IDP/CW/26-2009-L1**

**Lot No2. Repairs to four-story, four-entry houses No 93, 98, 99, 101 in the military settlement in Khoni Town, with the total area of 6327 m<sup>2</sup> - SB/IDP/CW/26-2009-L2**

##### Brief description:

The text of the tender announcement and the tender documentation were approved on 26 February 2009. The tender announcement was published on 28 February.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying

requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **12 600 00 Lari**.
- b) The requirements set down in the law for the tender announcement and tender documentation were not observed. Paragraph 4, article 12 and paragraph 3, article 14 of the law of Georgia on Public Procurements, precisely define those information and requirements which shall be submitted in detail. In this particular case, the tender announcement contains only part of those qualifying requirements which are given in the list of basic data of tender documentation. This is a gross violation of procedures for the conduct of bidding. Besides, it is important to note that the amendment made to the announcement is technically flawed and the amendment is not reflected in the tender documentation (the list of basic data).

**The estimated cost of works comprised:**

**Lot N1 - 1754000 Lari.**

**Lot N2 - 1911640 Lari.**

Six companies participated in the tender.

The winner was:

Lot 1 – New Energy Ltd with the cost of contract at 1018197 Lari. The contract was signed on 6 April 2009.  
**The price of tender proposal comprised 58 percent of the cost of works.**

Lot 2 – New Energy Ltd with the cost of contract at 1183211 Lari. The contract was signed on 6 April 2009.  
**The price of tender proposal comprised 62 percent of the cost of works.**

The works for both Lots were to be completed on 10 October 2009.

**The volume of works on Lot 1 was clarified by representatives of the design organization Opizari Ltd (presumably, this is the company that prepared the cost-estimate documentation) and administrative body of Khoni municipality. As a result the cost of contract increased from 1018197 by 772947 Lari to 1791144 Lari. Accordingly, an agreement on the increase of the contract price was signed on 20 August 2009, pushing up the tender price by almost 76 percent (772 947 /1 018 197 =75,9%).**

**The volume of works on Lot 2 was clarified by representatives of the design organization Opizari Ltd (presumably, this is the company that prepared the cost-estimate documentation) and administrative body of Khoni municipality. As a result the cost of contract increased from 1 183 211 by 742623 Lari to 1925834 Lari. Accordingly, an agreement on the increase of the contract price was signed on 20 August 2009, pushing up the tender price by almost 63 percent (742 623 /1 183 211 =62,7%).**

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. Such circumstances include the instances when in the process of implementation the volumes of certain works are clarified or the replacement of identical though same quality materials is needed. Such changes cannot be regarded of essential nature. The provided materials did not make it evident whether such circumstances existed, but such a big amount of change (76% and 63%) provides the ground to assume that they existed.

It is expedient to additionally request the documentation certifying the completion and the corresponding payment, for scrutiny.

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that **on 9 October 2009, the contract on Lot 1 was amended for the second time, postponing the deadline for the completion of works to 25 November 2009. The ground for the amendment is, as quoted, the delays in the commencement of works although the information on the reasons of the delay cannot be found in the documentation.**

**On 19 November 2009, the contract on Lot 1 was amended for the third time, decreasing the cost of works by 9274 Lari. However, despite the decrease in the volume of works the deadline for the completion of works extended to 9 December 2009.**

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that **on 9 October 2009, the contract on Lot 2 was amended for the second time, postponing the deadline for the completion of works to 25 November 2009. The ground for the amendment is, as quoted, the delays in the commencement of works although the information on the reasons of the delay cannot be found in the documentation.**

**On 19 November 2009, the contract on Lot 2 was amended for the third time, increasing the cost of works by 1678 Lari. However, despite the decrease in the volume of works the deadline for the completion of works extended to 9 December 2009.**

**It should be noted that despite a repeated extension of the deadlines for the completion of works the works are not completed as of now. This is also proved by the letter #379-g/10, dated 15 February 2010.**

It is expedient to additionally request the documentation certifying the completion and the corresponding payment, for scrutiny.

#### **Tender Package No SB/IDP/CW/27-2009**

##### **Object of the tender –**

##### **Lot No1. Repairs to IDP houses in Kvaliti Settlement of Zestafoni Town**

Brief description:

The text of the tender announcement and the tender documentation were approved on 23 February 2009. The tender announcement was published on 24 February.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **12 000 00 Lari**.
- b) The requirements set down in the law for the tender announcement and tender documentation were not observed. Paragraph 4, article 12 and paragraph 3, article 14 of the law of Georgia on Public Procurements, precisely define those information and requirements which shall be submitted in detail. In this particular case, the tender announcement contains only part of those qualifying requirements which are given in the list of basic data of tender documentation. This is a gross violation of procedures for the conduct of bidding.

**The estimated cost of works comprised 1 970 200 Lari.**

Four companies participated in the tender and submitted the following prices:

1. New Energy Ltd – 1339762 Lari;
2. Imereti 1 Ltd – 1419719 Lari;
3. Lazo Invest Ltd – 1723752 Lari;
4. **Block Georgia Ltd – 1188381 Lari.**

**The winner in the tender was Block Georgia Ltd with the contract price of 1188381 Lari. The tender proposal comprised 60 percent of the estimated cost of procurement ( $1188381 / 1970200 * 100 = 60,3\%$ ).**

The contract was signed on 10 April 2009.

The works were to be completed on 10 November 2009.

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that **on 6 November 2009, the contract was amended and the cost of works increased from 1188381 Lari by 272742 Lari to 1461123 Lari, showing the increase of 23 percent ( $272742 / 1188381 = 23\%$ ). The ground for the amendment was the emergence of additional works, which was certified by the engineering design company and technical supervisor. However, it is not evidenced by any document save the Defects Acts.**

On 19 November 2009, the parties signed the delivery-acceptance act saying that the works were completed on 10 November 2009. However, an official written notification on the part of the company that the works were completed within the specified terms is not available.

### **Tender Package No SB/IDP/CW/28-2009**

#### **Object of the tender –**

#### **Lot No1. Reconstruction of three-storied administrative building at Avtomshenebli St. and the kindergarten at Mikeladze-Mevele St. in Kutaisi Town**

Brief description:

The text of the tender announcement and the tender documentation were approved on 26 February 2009. The tender announcement was published on 26 February.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were (**the provided materials did not contain the announcement on the tender, therefore we used the information posted on the website of the MDF**):

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **4 500 00 Lari**.
- b) The requirements set down in the law for the tender announcement and tender documentation were not observed. Paragraph 4, article 12 and paragraph 3, article 14 of the law of Georgia on Public Procurements, precisely define those information and requirements which shall be submitted in detail. In this particular case, the tender announcement contains only part of those qualifying requirements which are given in the list of basic data of tender documentation. This is a gross violation of procedures for the conduct of bidding.

#### **The estimated cost of works comprised 526 000 Lari.**

Eleven companies participated in the tender and submitted the following prices:

1. Tobe Ltd – 523304 Lari;
2. Iberis 21 Ltd – 419556 Lari;
3. Service Ltd – 378977 Lari;
4. Berdi Ltd – 371866 Lari;
5. JSC SSG Imereti 1 – 438271 Lari;
6. Oda Ltd – 382849 Lari;
7. Nova Ltd – 341681 Lari;
8. MK Ltd – 428135 Lari;
9. Tegita Universal Ltd – 428135 Lari;
10. Block Georgia Ltd – 368063 Lari;
- 11. Poni Ltd – 338468 Lari;**

**The winner in the tender was Poni Ltd with the cost of contract at 338 469 Lari.** The contract was signed on 6 April. The tender proposal comprised 60 percent of the estimated cost of procurement (338 469/526 000\*100=64).

The works were to be completed on 10 September 2009.

**The volume of works was later clarified by the engineering design organization and local municipality. As a result the cost of contract increased from 338469 by 35 374 Lari to 373 844 Lari. Accordingly, an agreement on the increase of the contract value was signed on 6 August 2009, pushing up the tender price by about 10 percent (35 374 /338 469\*100=10,5%).**

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong.

**The increase in the cost of contract by means of the amendment is small. Nevertheless, the provided procurement materials do not allow proving the existence of the circumstances envisaged by the article 398 of the Civil Code.**

It is important to note that by the amendment of 6 August 2009, the deadline for the completion of works extended to 10 October.

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that **on 2 October 2009, the contract was amended for the second time and the cost of works increased by 29473 Lari to 403317 Lari. In the end the increase made up 64847 Lari, showing the increase of 19 percent (64847 /338 469\*100=19%). The deadline for the completion of works was not changed.**

**It is important that as specified in the contract the works were to be completed on 10 October 2009. The materials provided by the letter #379-g/10, dated 15 February 2010, does not include the delivery-acceptance act thus providing the ground to assume that the works were not completed on time.**

#### **Tender Package No SB/IDP/CW/29-2009**

##### **Object of the tender –**

**Lot No1. Rehabilitation of the former dormitory of Trust No9 at Shindisi St in Gori Town and buildings No1,2 and 3 of the vocational school in Khidistavi Village**

Brief description:

The text of the tender announcement and the tender documentation were approved on 26 February 2009. The tender announcement was published on 26 February.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **9 000 00 Lari**.
- b) The requirements set down in the law for the tender announcement and tender documentation were not observed. Paragraph 4, article 12 and paragraph 3, article 14 of the law of Georgia on Public Procurements, precisely define those information and requirements which shall be submitted in detail. In this particular case, the tender announcement contains only part of those qualifying requirements which are given in the list of basic data of tender documentation. This is a gross violation of procedures for the conduct of bidding.

**The estimated cost of works comprised 1 108 703 Lari.**

Eight companies participated in the tender and submitted the following prices:

1. Watkinson Ltd – 1175383 Lari;
2. Dagi Ltd – 999725 Lari;
3. Sani Ltd – 958579 Lari;
4. Gilmar 2 Ltd – 998814 Lari;
5. Service Ltd – 988284 Lari;
6. **Block Georgia Ltd – 845888 Lari;**
7. Inter 2007 Ltd – 709998 Lari;
8. SK Konstanta Ltd – 980911 Lari.

**The winner in the tender was Block Georgia Ltd with the contract price at 845888 Lari.**

The contract was signed on 10 April 2009.

The works were due to be completed on 11 September 2009.

**The volume of works was later clarified by representatives of the design organization, administrative body of Gori municipality and specialists of the customer organization. As a result the cost of contract increased from 846 501 by 100 402 Lari to 946 903 Lari. Accordingly, an agreement on the increase of the contract price was signed on 29 July 2009, pushing up the tender price by about 12 percent (100 402/846 501=12,3%).**

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong.

**The increase in the cost of contract by means of the amendment is small. Nevertheless, the provided procurement materials do not allow proving the existence of the circumstances envisaged by the article 398 of the Civil Code.**

It is important to note that after the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that as a result of the amendment of 4 September 2009:

- 1. The deadline for the completion of rehabilitation to buildings N2 and N3 in Khidistavi Village was 11 September 2009;**
- 2. The deadline for the completion of rehabilitation to building N1 in Khidistavi Village was 25 September 2009;**
- 3. The deadline for the completion of rehabilitation to the former dormitory of Trust N9 was not specified.**

As a result of the amendment of 14 September 2009:

- 1. The deadline for the completion of rehabilitation to buildings N2 and N3 in Khidistavi Village was 11 September 2009;**
- 2. The deadline for the completion of rehabilitation to building N1 in Khidistavi Village was 25 September 2009;**
- 3. The deadline for the completion of rehabilitation to the former dormitory of Trust N9 was not specified again.**

**The materials provided by the letter #379-g/10, dated 15 February 2010, do not include the delivery-acceptance act on the final completion of those works the deadline for which has already expired. Neither is any information available on the rehabilitation to the former dormitory of Trust N9, namely, on its implementation and completion.**

#### **Tender Package No SB/IDP/CW/30-2009**

##### **Object of the tender –**

##### **Lot No1. Rehabilitation of the houses in Kopitnari military settlement in Kutaisi Town**

Brief description:

The text of the tender announcement and the tender documentation were approved on 27 February 2009. The tender announcement was published on 2 March.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **10 500 00 Lari**.
- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

**The estimated cost of works comprised 3 507 428 Lari.**

Fifteen companies participated in the tender and submitted the following prices:

1. Dagi Ltd – 1499477 Lari;
2. JSC Imereti 1 – 1307989 Lari;
3. Watkinson Ltd – 1210918 Lari;
- 4. Block Georgia Ltd – 1117491 Lari;**
- 5. Inter 2007 Ltd – 841763 Lari;**
6. New Energy Ltd – 1148388 Lari;
7. JSC Iberi 21 – 1359900 Lari;
8. Grusia Ltd – 2184433 Lari;
9. Tbilisi 2005 Ltd – 1367059 Lari;
10. Akhali Mtvare Ltd – 1191622 Lari;
11. Oda Ltd – 1145755 Lari;
12. Tobe Ltd – 1332048 Lari;
13. Alioni 99 Ltd – 1324399 Lari;
14. Artesi Ltd – 1212274 Lari;
15. VIP Design Ltd – 1298556 Lari

The analysis of the provided documents revealed that the requirements set down in the law for the tender announcement and tender documentation were violated. Paragraph 4, article 12 and paragraph 3, article 14 of the law of Georgia on Public Procurements, precisely define those information and requirements which shall be submitted in detail. In this particular case, the tender announcement contains only part of those qualifying requirements which are given in the list of basic data of tender documentation. This is a gross violation of procedures for the conduct of bidding.

**The winner in the tender was Block Georgia Ltd with the contract price at 1 117 246 Lari.**

**It is important to note that the winning proposal comprised 30 percent of the estimated cost of the procurement, i.e. the bidding company proposed the price less by 70 percent as compared to the estimated cost of procurement. One may assume that the bidding company decreased the estimated cost of works by 70 percent in order to gain the advantage over others and thereafter it required the increase of 44 percent in the tender proposal.**

The contract was signed on 10 April 2009.

The works were due to be completed on 10 November 2009.

**On 13 August 2009, an agreement was signed on the increase of the cost of contract. In particular, the cost was increased from 1 117 246 Lari by 486 379 Lari to 1 603 625 Lari, pushing up the cost of tender by about 44 percent ( $486\,379/1117246=43,5\%$ ).**

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. The provided materials did not make it evident whether such circumstances existed, but such a big amount of change (44%) provides the ground to assume that they existed.

As the deadline for the completion of works is set on 10 November 2009, it is expedient to additionally request the documentation certifying the completion and the corresponding payment, for scrutiny.

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 24 November 2009, the parties signed the delivery-acceptance act saying that the works were completed on time. However, an official written notification on the part of the company that the works were completed within the specified terms is not available.

**Tender Package No SB/IDP/CW/31-2009**

**Object of the tender –**

**Lot No1. Rehabilitation of the former sea frontier post and the former sanitary-and epidemiological station in Kobuleti Town and the former technical school in city of Batumi**

Brief description:

The text of the tender announcement and the tender documentation were approved on 27 February 2009. The tender announcement was published on 2 March.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **9 000 00 Lari**.
- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

**The estimated cost of works comprised 1 268 865 Lari.**

Ten companies participated in the tender and submitted the following prices:

1. Anagi Ltd – 1018757 Lari;
2. Watkinson Ltd – 1163601 Lari;
3. Creative Impressions Caucasus Ltd – 1235343 Lari;
4. Sani Ltd – 1050465 Lari;
5. Pirosmiani Ltd – 1260551 Lari;
- 6. Service Ltd – 859944 Lari;**
7. Block Georgia Ltd – 1052729 Lari;
- 8. Akhali Mtvare Ltd – 997997 Lari;**
- 9. VIP Design Ltd – 892230 Lari;**
10. Elimp Ltd – 1116015 Lari;

**The analysis of the provided documents revealed significant circumstances:**

1. First of all, the requirements set down in the law for the tender announcement and tender documentation were violated. Paragraph 4, article 12 and paragraph 3, article 14 of the law of Georgia on Public Procurements, precisely define those information and requirements which shall be submitted in detail. In this particular case, the tender announcement contains only part of those qualifying requirements which are given in the list of basic data of tender documentation. This is a gross violation of procedures for the conduct of bidding.
2. **The bidding company offering the best price, Service Ltd, was disqualified on the grounds that the submitted materials did not include the evidence on having the work experience worth of 9 million Lari. The tender proposal and enclosed documentation submitted by the bidding company, however, reveal that the sum of construction works implemented by Service Ltd in 2006-2007-2008 years makes up about 21 million Lari. The information certifying the above said is also submitted. It is therefore absolutely unacceptable and illegal to disqualify the company having submitted the proposal which exceeded that of winning company by 33 000 Lari. As regards the confirmation of the above said by a profit tax declaration, it is worth noting that in accordance with the profit tax declaration for the years 2006 and 2007, the working experience of Service Ltd comprises  $2\ 877\ 920 + 6\ 251\ 385 = 9\ 129\ 305$ . That means that two year data alone fully met the requirement for 9 million work experience (qualifying experience). As regards the issue as to why Service Ltd failed to submit 2008 profit tax declaration, it should be noted that the tender packages were opened on 23 March 2009 whereas the deadline for the submission of the declarations for the year 2008 was 30 March 2009. Therefore, it is an absolutely valid argument that due to objective reasons the company did not have the profit tax declaration by that time.**
3. According to the protocol #3 dated 23 March 2009 of the Tender Commission, the provided documents do not show the turnover of the company although its existence is implied in "other documents" (?). The scrutiny of the tender proposal and enclosed materials reveal that the bidding company submitted the information on the construction works in the year 2008 alone

and the cost of completed works comprised almost 3 440 000 Lari. It is noteworthy that according to subparagraph (i), paragraph 4, article 12 and subparagraph (m), paragraph 3, article 14 of the Law of Georgia on Public Procurement, at the commission's decision, none of the qualification requirements were subject to further clarification. Therefore the decision of the commission allowing the rival to clarify qualification requirement within a set time and submit the profit tax declaration for 2008, was unacceptable. In this case, the commission did not also pay attention to the absence of relevant information. The declaration additionally submitted by VIP-Design Ltd showed that the turnover of the bidding company was in 2006 - 1 666 889 Lari; in 2007 - 2 014 474 Lari; in 2008 - 3 872 720 Lari. Thus, in total, according to submitted declarations, the company had the work experience of 7 54 083 Lari, which was short of qualifying criterion (9 million Lari). Accordingly, the company was to be disqualified, let alone the illegality of giving it the opportunity to provide additional documentation.

Regardless of all the above said, VIP Design Ltd was announced the winner with the contract price set at 891940 Lari.

The contract was signed on 21 April.

The deadline for the completion of works was set on 23 October 2009.

**On 20 July 2009, on the basis of the explanatory note of the MDF employee, the contract price increased by 279729 Lari to 1 171 670 Lari. Accordingly, the agreement on the increase of the contract price was signed on 23 July 2009, which pushed up the cost of the tender by 31 percent (279729/891940=31,3%).**

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. The provided materials did not make it evident whether such circumstances existed, but such a big amount of change (31%) provides the ground to assume that they existed.

As the deadline for the completion of works is set on 23 October 2009, it is expedient to additionally request the documentation certifying the completion and the corresponding payment, for scrutiny.

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 13 October 2009, the contract was amended for the second time, postponing the deadline for the completion of works to 23 November 2009.

**On 30 December 2009, the contract was amended for the third time, increasing the cost of works by 64716 Lari and decreasing by 69631 Lari, in total it decreased by 4915 Lari to 1166755 Lari.**

**On 2 December 2009 the parties signed the delivery-acceptance act saying that the works were completed on 23 November 2009.**

**It is rather strange that the works were completed on 23 November 2009, the delivery-acceptance act was signed on 2 December 2009 whereas the contract was amended for the third time on 30 December 2009, i.e. when the deadline for the completion of works had expired and the delivery-acceptance acts been signed by the parties.**

#### **Tender Package No SB/IDP/CW/32-2009**

##### **Object of the tender –**

**Lot No1. Rehabilitation of the houses in Kopitnari Military Settlement in Kutaisis Town (No 6,7,9,10, 11, 12, 14)**

Brief description:

The text of the tender announcement and the tender documentation were approved on 4 March 2009. The tender announcement was published on 6 March.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **12 900 00 Lari**.
- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

**The estimated cost of works comprised 2102400 Lari.**

Ten companies participated in the tender and submitted the following prices:

1. Grusia Ltd – 15432224 Lari;
2. New Energy Ltd – 1552071 Lari;
3. Dagi Ltd – 1621640 Lari;
4. Watkinson Ltd – 1481737 Lari;
5. JSC SSg Imereti 1 – 1464372 Lari;
6. Block Georgia Ltd – **1393684 Lari**;
7. Tbilisi 2005 Ltd – **1366423 Lari**;
8. Alioni 99 Ltd – 2062024 Lari;
9. VIP Design Ltd – 1739600 Lari;
10. SKK Khidi Ltd – **1331839 Lari**.

The requirements set down in the law for the tender announcement and tender documentation were violated. Paragraph 4, article 12 and paragraph 3, article 14 of the law of Georgia on Public Procurements, precisely define those information and requirements which shall be submitted in detail. In this particular case, the tender announcement contains only part of those qualifying requirements which are given in the list of basic data of tender documentation. This is a gross violation of procedures for the conduct of bidding.

The bidding company offering the best price, SSK Khidi Ltd (1331839 Lari), was disqualified on the grounds that the turnover of construction works over three years made up about **10 100 000 Lari**. This is another proof of our opinion about the high administrative barriers in the mentioned procurement.

Another bidding company, the second by the price, Tbilisi 2005 Ltd (1366423 Lari) was also disqualified on the grounds that the turnover of construction works over three years made up about **8 900 000 Lari**.

**The winner in the tender was Block Georgia Ltd with the contractual price at 1393692 Lari, which is 66 percent of the estimated cost of works.**

The contract was signed on 8 May 2009.

The works were to be completed on 27 November.

**On 12 August, on the basis of emerged additional works, which was certified by the engineering design organization and the explanatory note of an MDF employ, the contract price increased from 1393692 Lari by 911428 Lari to 2305121 Lari. The need of this amendment was also certified by a representative of the administrative body of Tskaltubo municipality. Accordingly, the agreement on the increase of the contract price was signed, pushing up the tender cost by about 65 percent ( $911428/1393692 *100=65\%$ ). It is important to note that any document evidencing the circumstances that are quoted as the ground for the amendment, cannot be find among the materials on the procurement.**

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. The provided materials did not make it evident whether such circumstances existed, but such a big amount of change (65%) provides the ground to assume that they existed.

As the deadline for the completion of works is set on 27 November 2009, it is expedient to additionally request the documentation certifying the completion and the corresponding payment, for scrutiny.

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that the ground for the amendment to the contract of 12 August 2009 was such type of works which belong to the category of hidden works. (It is important to note that the type of work "removing plaster from the wall" in the tender documentation cost-estimate was priced at 0,10 Lari per square meter, whereas after the increase in the volume, i.e. following the amendment, the price for the same space stood at 0,35 Lari).

On 10 December 2009, the parties signed the delivery-acceptance act saying that the works were completed on 27 November 2009, however, no document evidencing the above said could be found in the materials that were additionally provided.

#### **Tender Package No SB/IDP/CW/34-2009**

##### **Object of the tender –**

##### **Lot No1. Repairs to the former narcological dispensary, marine academy and the former sailors' hotels in Batumi Town**

##### **Brief description:**

The text of the tender announcement and the tender documentation were approved on 4 March 2009. The tender announcement was published on 7 March.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **9 000 00 Lari**.
- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

##### **The estimated cost of works comprised 1225770 Lari.**

Seven companies participated in the tender and submitted the following prices:

1. Akhali Mtvare Ltd – 909018 Lari;
2. New Energy Ltd – 1114373 Lari;
3. Anagi Ltd – **826691 Lari**;
4. JSC Ertji – 999967 Lari;
5. KID Ltd – 1183767 Lari;
6. Block Georgia Ltd – 964784 Lari;
7. Tbilisi 2005 Ltd – 923723 Lari;

The requirements set down in the law for the tender announcement and tender documentation were violated. Paragraph 4, article 12 and paragraph 3, article 14 of the law of Georgia on Public Procurements, precisely define those information and requirements which shall be submitted in detail. In this particular case, the tender announcement contains only part of those qualifying requirements which are given in the list of basic data of tender documentation. This is a gross violation of procedures for the conduct of bidding.

**The winner in the tender was Anagi Ltd with the contractual price at 826690 Lari, which is 66 percent of the estimated cost of works.**

The contract was signed on 8 April 2009.

The works were to be completed on 13 October.

On 3 August 2009, on the basis of emerged additional works, which was certified by the engineering design organization and the explanatory note of an MDF employ, the contract price increased from 826690 Lari by 314400 Lari to 1141091 Lari. Accordingly, the agreement on the increase of the contract price was signed, pushing up the tender cost by about 38 percent ( $314400 / 826690 *100=38\%$ ). It is important to note that the ground for the amendment is certified by the design organization which was presumably responsible for the development of engineering design and cost estimate documentation.

It is very important to note that on 20 August 2009 the Ministry of Health and Social Affairs of the Autonomous Republic of Ajara submitted a letter to the MDF, saying that first two floors of one of the three facilities to be repaired, namely, the marine academy, were on the balance sheet of the Ministry of Defense which refused to transfer that space. It is noteworthy that the facility was selected for repairs, the rehabilitation project was prepared and the tender announced without double-checking whom it belonged to.

It is also interesting that on 7 September 2009, the contract was again amended decreasing the volume of rehabilitation works though increasing the cost of contract by 58980 Lari to 1200071 Lari, thus pushing up the initial price of contract by 45 percent. In fact, the decrease in the volume of works increased the cost of works at a higher percentage rate. Accordingly, the deadline for the completion of the dormitory of the marine academy also extends to 20 December 2009.

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. The provided materials did not make it evident whether such circumstances existed, but such a big amount of change (45%) provides the ground to assume that they existed. It is also noteworthy that such a high increase in the cost of contract took place in the circumstances of the decrease in the volume of works.

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 9 October 2009, the contract was amended for the third time extending further the deadline for the completion of works on the 1<sup>st</sup> position. In particular, the deadline for the completion of the repairs to the former narcological dispensary and the former sailors' hotel in Batumi was postponed from 13 October to 20 December 2009.

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 9 October 2009, the contract was amended for the fourth time increasing the cost of works by 34842 Lari to 1234913 Lari. In the end, the cost of tender increased by 408222 Lari, causing the increase of 49 percent in price ( $408222 / 826690 *100=49\%$ ).

The amendment also postponed the deadline for the completion of work to 1 April 2010.

It is important to note that the public procurement was carried out during two years which is a multi-year procurement and pursuant to paragraph 1, article 9 of the Law of Georgia on Public Procurement, requires that it be agreed upon in advance with the Ministry of Finance and Agency for Procurements. The procurement materials do not include a document evidencing this agreement, which provides the ground to assume that such an agreement was not reached.

#### Tender Package No SB/IDP/CW/35-2009

##### **Object of the tender –**

**Lot No1. Repairs to “Mtis Kheoba” Sanatorium in Borjomi Town. SB/IDP/CW/35-2009-L1**

**Lot No2. Repairs to “Plato” Sanatorium” in Borjomi Town. SB/IDP/CW/35-2009-L2**

##### **Brief description:**

The text of the tender announcement and the tender documentation were approved on 9 March 2009. The tender announcement was published on 11 March.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of

Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **10 200 00 Lari** for Lot 1 and **7 200 000 Lari** for Lot 2.
- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

The estimated cost of works comprised:

**Lot 1 - 1919581 Lari.**

**Lot 2 - 1030472 Lari.**

Eight companies participated in the tender and submitted the following prices:

1. Sani Ltd – Lot 1 – 1274780 Lari, Lot 2 – 695705 Lari;
2. New Energy Ltd – Lot 1 – 1454841 Lari, Lot 2 – 772592 Lari;
3. Mshenebeli 2004 Ltd – Lot 2 – 995575 Lari;
4. JSC Tbilimretsmsheni – Lot 1 – 1570578 Lari, Lot 2 – 800302 Lari;
5. Astoria Ltd – Lot 2 – 753158 Lari;
6. Block Georgia Ltd – Lot 1 – 1247027 Lari (the protocol showed an incorrect figure of 1274027 Lari), Lot 2 – 684349 Lari;
7. Reconstruckcia + Ltd Lot 2 – 952874 Lari;
8. AMA Ltd – Lot 2 – 596156 Lari.

The requirements set down in the law for the tender announcement and tender documentation were violated. Paragraph 4, article 12 and paragraph 3, article 14 of the law of Georgia on Public Procurements, precisely define those information and requirements which shall be submitted in detail. In this particular case, the tender announcement contains only part of those qualifying requirements which are given in the list of basic data of tender documentation. This is a gross violation of procedures for the conduct of bidding.

The winner in the tender was Block Georgia Ltd with the contractual price at 1247077 Lari for Lot 1, which is 64 percent of the estimated cost of works, and 684348 Lari for Lot 2, which is 66 percent of the estimated cost of works.

The contract was signed on 24 April 2009.

The works were to be completed on 28 December 2009 for Lot 1 and 28 October for Lot 2.

**On 8 July 2009, on the basis of several explanatory notes from an MDF employee and requests from the head of administrative body of Borjomi municipality, the cost of contract on Lot 1 increased from 1247077 Lari by 203524 Lari to 1450602 Lari. Accordingly, on 8 July 2008, an agreement was executed on the increase of the cost of contract, which pushed up the price of the tender by about 16 percent (203524 /1247077\*100=16%).**

**On 14 August 2009, the contract was amended for the second time, increasing the cost by 6134 Lari to 1456736 Lari. It should be noted that unlike all the other public procurements reviewed by us, this is the first case when the procurement materials contained several letters from the head of administrative body of local municipality, certifying the need for the amendments. In this particular case the problem is the poor preparation of cost estimate documentation alone.**

**On 28 December 2009 the contract was amended for the third time, decreasing the cost by 244 Lari to 1456492 Lari. The amendment also affected the deadline for the completion of works, postponing it to 25 January 2010.**

The materials provided with the letter N669-g/10 dated 17 March 2010 reveal that on 22 January 2010 the MDF received a notification from New Energy Ltd regarding the completion of works on **SB/IDP/CW/35-2009 Lot N1**.

**On 2 February 2010 the contract was amended for the fourth time, decreasing the cost slightly by 2005 Lari.**

**On 5 February 2010, the parties drew up the delivery-acceptance act saying that the works were completed on 25 January 2010.**

On the basis of several explanatory notes from an MDF employee and requests from the head of administrative body of Borjomi municipality, the cost of contract on Lot 2 decreased from 684348 Lari by 8334 Lari to 676013 Lari. The procurement works were slimmed down to exclude a number of types of works, resulting in some savings that allowed performing the works not envisaged during the preparation of additional design. This procurement is one more proof of imperfect implementation of public procurement. With the active involvement of local municipality, however the procurement was performed very efficiently and within the optimal spending.

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 8 December 2009, the contract was amended for the second time, decreasing the cost of works by 16010 Lari to 720674 Lari.

**On 10 December 2009, the parties drew up the delivery-acceptance act saying that the works were completed on 27 November 2009, although an official written notification on the part of the company to the MDF that the works were completed was not found in the materials.**

#### **Tender Package No SB/IDP/CW/36-2009**

**Object of the tender –**

**Lot No1. Repairs to school No7 in Kobuleti Town**

Brief description:

The text of the tender announcement and the tender documentation were approved on 13 March 2009. The tender announcement was published on 16 March.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **7 200 000 Lari**.
- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

**The estimated cost of works comprised 1012640 Lari.**

Six companies participated in the tender and submitted the following prices:

1. Anagi Ltd – 723574 Lari;
2. New Energy Ltd – 749798 Lari;
3. Grusia Ltd – 877918 Lari;
4. Industria 2 Ltd – 823628 Lari;
5. Block Georgia Ltd – 750615 Lari;
6. Dagi Ltd – 767686 Lari.

The requirements set down in the law for the tender announcement and tender documentation were violated. Paragraph 4, article 12 and paragraph 3, article 14 of the law of Georgia on Public Procurements, precisely define those information and requirements which shall be submitted in detail. In this particular case, the tender announcement contains only part of those qualifying requirements which are given in the list of basic

data of tender documentation. This is a gross violation of procedures for the conduct of bidding.

**The winner in the tender was Anagi Ltd with the contractual price at 723564 Lari, which was 71 percent of the estimated cost of works.**

The contract was signed on 23 April 2009.

The works were to be completed on 27 October 2009.

On 10 July 2009, on the basis of explanatory note from an MDF employee and request from the ministry of health and social affairs of Ajara Autonomous Republic and representative of engineering design organization, Ajaraspetsproekti Ltd, the cost of contract increased from 723564 Lari by 67519 Lari to 791083 Lari. Accordingly, on 10 July 2008, an agreement was executed on the increase of the cost of contract, which pushed up the price of the tender by about 10 percent ( $67519/723564*100=10\%$ ).

On 10 August 2009, the contract was amended for the second time, increasing the cost by 12961 Lari to 804045 Lari. The ground for the amendment was, as quoted, volume of works clarified by representatives of the engineering design organization and local municipality. The unjustified increase in the cost on the same grounds raises doubts about the legality of the public procurement. It should also be noted that procurement materials do not contain a document evidencing the mentioned factual circumstances. On 10 August 2009, the agreement was signed on the increase in the cost of contract, pushing up the cost of tender by about 2 percent ( $12961/791083*100=2\%$ ).

In total, the cost of contract increased from 723564 Lari by 80480 Lari to 804045 Lari, which caused the 11 percent increase of the price of tender.

**It should be noted that unlike all the other public procurements reviewed by us, this increase is not big of course, but it indicates about a poor preparation and implementation of the procurement.**

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 6 November 2009, the contract was amended for the third time, decreasing the cost of works by 25202 Lari to 778843 Lari.

On 7 November 2009, the parties drew up the delivery-acceptance act saying that the works were completed on 27 October 2009, although an official written notification on the part of the company to the MDF that the works were completed were not found in the materials.

#### **Tender Package No SB/IDP/CW/37-2009**

##### **Object of the tender –**

**Lot No1. Repairs to the mechanical factory back office and the kindergarten at Melikishvili St. in Batumi Town**

Brief description:

The text of the tender announcement and the tender documentation were approved on 20 March 2009. The tender announcement was published on 21 March.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **7 200 000 Lari**.
- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

**The estimated cost of works comprised 1537280 Lari.**

Two companies participated in the tender and submitted the following prices:

1. Anagi Ltd – 1171326 Lari;
2. **New Energy Ltd – 1138040 Lari;**

The requirements set down in the law for the tender announcement and tender documentation were violated. Paragraph 4, article 12 and paragraph 3, article 14 of the law of Georgia on Public Procurements, precisely define those information and requirements which shall be submitted in detail. In this particular case, the tender announcement contains only part of those qualifying requirements which are given in the list of basic data of tender documentation. This is a gross violation of procedures for the conduct of bidding.

The winner in the tender was New Energy Ltd with the contractual price at **1138040 Lari**, which was 74 percent of the estimated cost of works.

The contract was signed on 30 April 2009.

The works were to be completed on 29 November 2009.

**After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 25 November 2009, the contract was amended increasing the cost of works from 1138040 Lari by 140806 Lari to 1278847 Lari. The ground for the amendment was, as quoted, volume of works clarified by representatives of the engineering design organization and local municipality. This amendment increased the cost of tender by about 12 percent in price (140806/1138040\*100=12%). The amendment also postponed the deadline for the completion of works to 24 December 2009. It should be noted that this increase was not big, but it indicates about a poor preparation and implementation of the procurement.**

**On 4 January 2010, the contract was amended the second time, increasing the cost by 5148 Lari and decreasing by 37695 Lari and in total, decreasing by 32547 Lari to 1246300 Lari.**

**On 28 December 2009, the parties signed the delivery-acceptance act saying that the works were completed on 17 December 2009.**

**It is however strange that on 4 January 2010, the second amendment was made after the works were completed on 17 December, and the parties signed the delivery-acceptance act on 28 December 2009. Therefore, the content of the second amendment is incomprehensible as well as its conformity with the procurement procedures.**

**Tender Package No SB/IDP/CW/38-2009**

**Object of the tender –**

**Lot No1. Repairs to IDP housing in educational building of cooperative technical school in city of Kutaisi.**

Brief description:

The text of the tender announcement and the tender documentation were approved on 20 March 2009. The tender announcement was published on 21 March.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **10 500 000 Lari**.
- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to

evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

**The estimated cost of works comprised 1713178 Lari.**

Seven companies participated in the tender and submitted the following prices:

1. Mshenebeli 80 Ltd – 1171326 Lari;
2. New Energy Ltd – 1283501 Lari;
3. **Axis Ltd – 1067114 Lari;**
4. Block Georgia Ltd – 1164045 Lari;
5. Tegeta Motors Ltd – 1758941 Lari;
6. JSC Imereti 1 – 1276544 Lari;
7. **Oda Ltd – 1148434 Lari.**

The requirements set down in the law for the tender announcement and tender documentation were violated. Paragraph 4, article 12 and paragraph 3, article 14 of the law of Georgia on Public Procurements, precisely define those information and requirements which shall be submitted in detail. In this particular case, the tender announcement contains only part of those qualifying requirements which are given in the list of basic data of tender documentation. This is a gross violation of procedures for the conduct of bidding.

It should be noted that the company, Axis Ltd, which offered the best price was disqualified for the failure to submit complete documentation certifying qualification requirements. We believe that it was the right decision.

**The winner in the tender was Oda Ltd with the contractual price at 1148434 Lari, which was 67 percent of the estimated cost of works.**

The contract was signed on 11 May 2009.

The works were to be completed on 18 November 2009.

The supervisor of works on the part of the purchaser was Anzor Andghuladze.

As the deadline of 18 November 2009 for the completion of works has already expired, the additional documentation, certifying the completion of works and corresponding payments, should be requested for further scrutiny.

**Tender Package No SB/IDP/CW/39-2009**

**Object of the tender –**

**Lot No1. Rehabilitation of 24 apartments in the former financial college at Tabukashvili St. and apartments in the mining college at Gamsakhurdia St. for the IDPs.**

Brief description:

The text of the tender announcement and the tender documentation were approved on 20 March 2009. The tender announcement was published on 21 March.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **6 900 000 Lari.**
- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

### **The estimated cost of works comprised 1156710 Lari.**

Seven companies participated in the tender and submitted the following prices:

1. Mshenebeli 80 Ltd – 849824 Lari;
2. New Energy Ltd – 821179 Lari;
3. Axis Ltd – 817563 Lari;
4. Block Georgia Ltd – 799920 Lari;
5. Gilmari 2 Ltd – 830748 Lari;
6. JSC Imereti 1 – 864976 Lari;
7. **Oda Ltd – 718799 Lari.**

The requirements set down in the law for the tender announcement and tender documentation were violated. Paragraph 4, article 12 and paragraph 3, article 14 of the law of Georgia on Public Procurements, precisely define those information and requirements which shall be submitted in detail. In this particular case, the tender announcement contains only part of those qualifying requirements which are given in the list of basic data of tender documentation. This is a gross violation of procedures for the conduct of bidding.

**The winner in the tender was Oda Ltd with the contractual price at 718830 Lari, which is 62 percent of the estimated cost of works.**

The contract was signed on 11 May 2009.

The works were to be completed on 30 November 2009.

The supervisor of works on the part of the purchaser was Anzor Andghuladze.

**After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 26 November 2009, the contract was amended increasing the cost of works from 718830 Lari by 205488 Lari to 924319 Lari. The ground for the amendment was, as quoted, volume of works clarified by representatives of the engineering design organization. This amendment increased the cost of tender by about 29 percent (205488/718830\*100=29%).**

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. The provided materials did not make it evident whether such circumstances existed, but such a big amount of change (29%) provides the ground to assume that they existed.

On 11 December 2009, the parties drew up the delivery-acceptance act saying that the works were completed on 30 November 2009, although an official written notification on the part of the company to the MDF that the works were completed was not found in the materials.

### **Tender Package No SB/IDP/CW/40-2009**

#### **Object of the tender –**

**Lot No1. Repairs to the outside water supply and sewage systems of the IDP housing buildings in Telavi and Sagarejo Towns and Bakurtsikhe Village of Gurjani District.**

Brief description:

The text of the tender announcement and the tender documentation were approved on 20 March 2009. The tender announcement was published on 21 March.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **4 200 000 Lari**.
- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not

set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

**The estimated cost of works comprised 202329 Lari.**

Two companies participated in the tender and submitted the following prices:

1. Burji 21 Ltd – 215021 Lari;
2. New Energy Ltd – 238172 Lari;

The requirements set down in the law for the tender announcement and tender documentation were violated. Paragraph 4, article 12 and paragraph 3, article 14 of the law of Georgia on Public Procurements, precisely define those information and requirements which shall be submitted in detail. In this particular case, the tender announcement contains only part of those qualifying requirements which are given in the list of basic data of tender documentation. This is a gross violation of procedures for the conduct of bidding.

The company, Burji Ltd, which offered the best price was disqualified for the failure to submit complete documentation certifying qualification requirements. We believe that it was the right decision.

**The winner in the tender was New Energy Ltd with the contractual price at 238172 Lari, which is 117 percent of the estimated cost of works..**

**It is important to note that the estimated cost of procurement comprised 202329 Lari and this figure was reflected in the procurement plan and relevant budget allocation. However, the price offered in the tender proposal was more by 17 percent than the financial capacity and plan of the purchaser. Pursuant to paragraph 2, article 21 of the Ordinance #1, dated 3 January 2006, of Chairman of State Procurement Agency on the approval of regulation on the Rule for Implementing State Procurements, a tender shall be completed with a negative outcome if none of submitted bid prices conforms to the financial capacity of a procuring entity. In this particular case this legal provision was blatantly ignored by the purchaser.**

The contract was signed on 24 April 2009.

The works were to be completed on 28 June 2009.

The supervisor of works on the part of the purchaser was Tengo Aleksishvili.

**After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 10 July 2009, the parties drew up the delivery-acceptance act saying that the works were completed within the specified timeframe, although an official written notification on the part of the company to the MDF that the works were completed was not found in the materials.**

**Tender Package No SB/IDP/CW/41-2009**

**Object of the tender –**

**Lot No1. Repairs to the former school building in Chakvi Settlement.**

Brief description:

The text of the tender announcement and the tender documentation were approved on 23 March 2009. The tender announcement was published on 25 March.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **12 600 000 Lari**.
- b) The following qualification requirement is especially worth mentioning. Companies were required to

submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

**The estimated cost of works comprised 2354800 Lari.**

Seven companies participated in the tender and submitted the following prices:

1. **Mshenebeli 80 Ltd – 1724642 Lari;**
2. New Energy Ltd – 2039377 Lari;
3. Dagi Ltd – 1796182 Lari;
4. Spetsmsheni 99 Ltd – 2292905 Lari;
5. Anagi Ltd – 1748672 Lari;
6. JSC Grusia – 1729343 Lari;
7. Tbilisi 2005 Ltd – 1761349 Lari.

The requirements set down in the law for the tender announcement and tender documentation were violated. Paragraph 4, article 12 and paragraph 3, article 14 of the law of Georgia on Public Procurements, precisely define those information and requirements which shall be submitted in detail. In this particular case, the tender announcement contains only part of those qualifying requirements which are given in the list of basic data of tender documentation. This is a gross violation of procedures for the conduct of bidding.

**The winner in the tender was Mshenebeli 80 Ltd with the contractual price at 1724642 Lari, which was 73 percent of the estimated cost of works.**

The contract was signed on 8 May 2009.

The works were to be completed on 30 December 2009.

The supervisor of works on the part of the purchaser was Zaza Pirtskhalaishvili.

**After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 30 November 2009, the contract was amended increasing the cost of works from 1724642 Lari by 384650 Lari to 2109292 Lari. The ground for the amendment was, as quoted, volume of works clarified by representatives of the engineering design organization and local municipality. This amendment increased the cost of tender by about 22 percent ( $205488/718830*100=22\%$ ).**

**The amendment also extended the term for the completion of works to 30 January 2010, which modified the procurement into a multi-year procurement. However, materials do not contain priori consents from the Agency for Procurement and Ministry of Finance. This is the breach of article 9 of the Law of Georgia on Public Procurements.**

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. The provided materials did not make it evident whether such circumstances existed, but such a big amount of change (22%) provides the ground to assume that they existed.

The materials provided with the letter N669-g/10 dated 17 March 2010 reveal that on 26 January 2010 the MDF received a notification regarding the completion of works on **SB/IDP/CW/41-2009**.

**On 5 February 2010, the contract was amended for the second time, insignificantly decreasing the cost of works by 1670 Lari.**

**On 8 February 2010, the parties drew up a delivery-acceptance act saying that the works were completed on 26 January 2010.**

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### Tender Package No SB/IDP/CW/42-2009

**Object of the tender –**

**Lot No1. Rehabilitation of the IDP housing in buildings 1 and 2 of “Borjomi Clinic” Ltd (the former sanatorium of the railway station).**

Brief description:

The text of the tender announcement and the tender documentation were approved on 25 March 2009. The tender announcement was published on 26 March.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **7 200 000 Lari**.
- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

**The estimated cost of works comprised 860548 Lari.**

Nine companies participated in the tender and submitted the following prices:

1. Rekonstrukcia + Ltd – 647075 Lari;
2. New Energy Ltd – 634567 Lari;
3. Dagi Ltd – 631157 Lari;
- 4. Artek LTD - 570547 Lari;**
5. Dasavletgazmsheni Ltd – 581240 Lari;
6. Geokolori Ltd – 714505 Lari;
7. Joint enterprise Mshenebeli Ltd and Astoria Ltd – 598506 Lari.
8. Gilmari 2 Ltd – 575094 Lari;
9. Arsi Konsetsusi- 820461 Lari. (the protocol shows incorrect figure of 575094 Lari.)

The requirements set down in the law for the tender announcement and tender documentation were violated. Paragraph 4, article 12 and paragraph 3, article 14 of the law of Georgia on Public Procurements, precisely define those information and requirements which shall be submitted in detail. In this particular case, the tender announcement contains only part of those qualifying requirements which are given in the list of basic data of tender documentation. This is a gross violation of procedures for the conduct of bidding.

**The winner in the tender was Artesi 80 Ltd with the contractual price at 570550 Lari, which was 66 percent of the estimated cost of works.**

The contract was signed on 21 May 2009.

The works were to be completed on 27 September 2009.

The supervisor of works on the part of the purchaser was Zviad Parkadze.

**On 31 July 2009, the contract was amended. The ground for the amendment was, as quoted, volume of works clarified by representatives of the engineering design organization and local municipality. Although the procurement materials do not contain a document evidencing the above mentioned circumstances. The amendment resulted in the increase of the cost of contract from 570550 Lari by 324684 Lari to 895234 Lari. An agreement was accordingly signed on the increase of the contract price, pushing up the price of tender by about 57 percent ( $324684 / 570550 * 100 = 57\%$ ).**

**On 21 August 2009, the contract was again amended, increasing the cost of contract by 57961 Lari to 953195 Lari. The ground for the amendment was, as quoted, volume of works clarified by**

**representatives of the engineering design organization and local municipality. Unjustified increase of the cost for the second time on the same grounds raises doubts about the legality of the public procurement. Moreover, the procurement materials do not contain a document evidencing the circumstances indicated as the grounds for the amendment. On 21 August 2009, an agreement was signed on the increase of the contract price, pushing up the price of tender by about 6 percent (57961 /895234 \*100=6%).**

**In total, the price increased from 570550 Lari by 570550 Lari to 953195 Lari, which pushed up the cost of tender by about 67 percent.**

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. The provided materials did not make it evident whether such circumstances existed, but such a big amount of change (67%) provides the ground to assume that they existed.

**On 21 September 2009, i.e. six days earlier the expiration of the term for the completion of works, the contract was amended for the third time, postponing the deadline for the completion to 12 October 2009.**

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 19 October 2009, the contract was amended for the fourth time decreasing the cost of works from 953195 Lari by 11277 Lari to 941918 Lari.

**On 22 December 2009, the parties drew up the delivery-acceptance act saying that the works were completed on 12 October 2009, although an official written notification on the part of the company to the MDF that the works were completed was not found in the materials.**

#### **Tender Package No SB/IDP/CW/43-2009**

**Object of the tender –**

**Lot No1. Rehabilitation of the IDP housing in the preventive clinic building of the rubber factory at Chonkadze St. in Kutaisi Town.**

Brief description:

The text of the tender announcement and the tender documentation were approved on 6 April 2009. The tender announcement was published on 7 April.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **6 600 000 Lari**.
- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

**The estimated cost of works comprised 778600 Lari.**

Eleven companies participated in the tender and submitted the following prices:

1. Tbilmretsvmsheni 3 Ltd – 577213 Lari;
2. New Energy Ltd – 652323 Lari;

3. Dagi Ltd – 608634 Lari;
4. Mshenebeli 80 Ltd – 555275 Lari;
5. Dasavletgazmsheni Ltd – 499626 Lari;
6. JSC Imereti 1 – 601897 Lari;
7. Grusia Ltd – 568557 Lari.
- 8. Gilmari 2 Ltd – 510968 Lari;**
9. Mshenebeli Ltd – 618547 Lari;
10. Block Georgia Ltd – 546711 Lari;
11. Iberia 21 Ltd - 647433 Lari.

The requirements set down in the law for the tender announcement and tender documentation were violated. Paragraph 4, article 12 and paragraph 3, article 14 of the law of Georgia on Public Procurements, precisely define those information and requirements which shall be submitted in detail. In this particular case, the tender announcement contains only part of those qualifying requirements which are given in the list of basic data of tender documentation. This is a gross violation of procedures for the conduct of bidding.

**The winner in the tender was Gilmari 2 Ltd with the contractual price at 510968 Lari, which is 64 percent of the estimated cost of works.**

The contract was signed on 22 May 2009.

The works were to be completed on 15 October 2009.

The supervisor of works on the part of the purchaser was Anzor Andghuladze.

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 13 October 2009, the contract was amended extending the term for the completion of works to 30 November 2009.

**On 26 November 2009, the contract was amended the second time, increasing the cost of contract from 499549 Lari by 122667 Lari to 622216 Lari. The ground for the amendment was, as quoted, volume of works clarified by representatives of the engineering design organization. The cost of tender, accordingly, increased by about 25 percent (122667 /499549 \*100=25%). The amendment also postponed the deadline for the completion of works to 10 December 2009.**

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. The provided materials did not make it evident whether such circumstances existed, but such a big amount of change (29%) provides the ground to assume that they existed.

#### **Tender Package No SB/IDP/CW/44-2009**

##### **Object of the tender –**

**Lot No1. Capital repairs to the railway hospital laboratory building and reconstruction of the hotel building in Samtredia Town.**

Brief description:

The text of the tender announcement and the tender documentation were approved on 6 April 2009. The tender announcement was published on 7 April.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **9 000 000 Lari**.
- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not

set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

#### **The estimated cost of works comprised 1065200 Lari.**

Ten companies participated in the tender and submitted the following prices:

1. Tbilmetsvmsheni 3 Ltd – 753572 Lari;
2. New Energy Ltd – 790929 Lari;
3. Dagi Ltd – 811457 Lari;
4. Dasavletgazmsheni Ltd – 641603 Lari;
5. JSC Imereti 1 – 800236 Lari;
6. Grusia Ltd – 698610 Lari
7. **Axis Ltd – 626393 Lari;**
8. Mshenebeli Ltd – 626393 Lari;
9. Block Georgia Ltd – 723916 Lari;
10. Iberia 21 Ltd - 935146 Lari.

The requirements set down in the law for the tender announcement and tender documentation were violated. Paragraph 4, article 12 and paragraph 3, article 14 of the law of Georgia on Public Procurements, precisely define those information and requirements which shall be submitted in detail. In this particular case, the tender announcement contains only part of those qualifying requirements which are given in the list of basic data of tender documentation. This is a gross violation of procedures for the conduct of bidding.

**The winner in the tender was Axis Ltd with the contractual price at 626588 Lari, which was 58 percent of the estimated cost of works.**

The contract was signed on 28 May 2009.

The works were to be completed on 28 October 2009.

The supervisor of works on the part of the purchaser was Anzor Andghuladze.

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 15 October 2009, the contract was amended, increasing the cost of contract from 626588 Lari by 325508 Lari to 952096 Lari. The ground for the amendment was, as quoted, volume of works clarified by representatives of the engineering design organization. The cost of tender, accordingly, increased by about 52 percent ( $325508/626588*100=52\%$ ). The amendment also postponed the deadline for the completion of works to 28 October 2009 for the first stage works and 31 January 2010 for the second stage works.

**This procurement became a multi-year procurement. However, procurement materials do not contain prior consents from the Agency for Procurement and Ministry of Finance. This is the breach of article 9 of the Law of Georgia on Public Procurements**

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. The provided materials did not make it evident whether such circumstances existed, but such a big amount of change (29%) provides the ground to assume that they existed.

**Tender Package No SB/IDP/CW/45-2009**

**Object of the tender –**

**Lot No1. Repairs to the IDP housing in vocational school buildings No1,2,3, and 4 in Nojikhevi Village and in the vocational school of Kheta Village of Khobi District. SB/IDP/CW/45-2009-L1**

**Lot 2. Repairs to the IDP housing in houses No 1,2, and 3 in Torsa Dgvaba Village of Khobi**

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**District and in the sports school dormitory building at Dadiani St. in Khobi Town. SB/IDP/CW/45-2009-L2**

Brief description:

The text of the tender announcement and the tender documentation were approved on 6 March 2009. The tender announcement was published on 8 March.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **7 500 000 Lari** for Lot 1 and **6 000 000 Lari** for Lot 2.
- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

The estimated cost of works comprised 2631728 Lari, although costs are not specified by Lots.

Four companies participated in the tender and submitted the following prices:

1. Axis Ltd - Lot 1 - **935152 Lari**, Lot 2 - **715370 Lari**;
2. Sharagzamsheni Ltd - Lot 1 - 1142493 Lari;
3. Dasavletgzamsheni Ltd - Lot 1 - 1024227 Lari, Lot 2 - 761061 Lari;
4. Block Georgia Ltd - Lot 1 - 1203761 Lari, Lot 2 - 832132 Lari;

The requirements set down in the law for the tender announcement and tender documentation were violated. Paragraph 4, article 12 and paragraph 3, article 14 of the law of Georgia on Public Procurements, precisely define those information and requirements which shall be submitted in detail. In this particular case, the tender announcement contains only part of those qualifying requirements which are given in the list of basic data of tender documentation. This is a gross violation of procedures for the conduct of bidding.

**The winner in the tender was Axis Ltd with the contractual price at 715369 Lari, which is 66 percent of the estimated cost of works.**

The contract was signed on 28 May 2009.

The works were to be completed on 28 January 2010 for both Lots.

**It is important to underline that the procurement is implemented during two years, representing a multi-year procurement which, pursuant to paragraph 1, article 9 of the Law of Georgia on Public Procurements, requires a prior consent from the Ministry of Finance and Agency for Procurement. However, materials do not contain a document certifying the consent from the above mentioned agencies which makes us think that this sort of agreement was not achieved at all.**

On 8 September 2009, representatives of the engineering design organization and local municipality identified the need for additional works on Lot 1. On this basis, the cost of contract increased from 936383 Lari by 329881 Lari to 1266264 Lari. Accordingly, on 8 September 2009, the agreement was signed on the increase of the cost of contract, pushing up the price of tender by 35 percent ( $329881/936383*100=35\%$ ). However, the procurement materials do not contain a document evidencing the circumstances indicated as the grounds for the amendment.

On 8 September 2009, representatives of the engineering design organization and local municipality identified the need for additional works on Lot 2. On this basis, the cost of contract increased from 715369 Lari by 343837 Lari to 1059207 Lari. Accordingly, on 8 September 2009, the agreement was signed on the increase of the cost of contract, pushing up the price of tender by 48 percent ( $343837/715369*100=48\%$ ). However, the procurement materials do not contain a document evidencing the circumstances indicated as the grounds for the amendment.

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. The provided materials did not make it evident whether such circumstances existed, but such a big amount of change (35% and 48%) provides the ground to assume that they existed.

As the deadline of 28 January 2010 for the completion of works on Lot 1 and Lot 2, the additional documentation, certifying the completion of works and corresponding payments, should be requested for further scrutiny.

**On 18 December 2009, the parties drew up the delivery-acceptance act saying that the works were completed on 10 December 2009, although an official written notification on the part of the company to the MDF that the works were completed was not found in the materials.**

#### **Tender Package No SB/IDP/CW/46-2009**

##### **Object of the tender –**

**Lot No1. Repairs to the IDP housing in houses No 44, 45, 52, 53 and 54 and in the kindergarten in Potskho Etseri Village of Tsalenjikha District. SB/IDP/CW/46-2009-L1**

**Lot 2. Repairs to the IDP housing in houses No 56, 57, 58, 59 and 60 in Potskho Etseri Village in Tsalenjikha District. SB/IDP/CW/46-2009-L2**

**Lot 3. Repairs to the IDP housing in the administration building, "Engurhesi" dormitory buildings No1 and 2 in Potskho Etseri Village, in the village council building in Mujava Village and in the construction section "Poligoni" in Chale Village of Tsalenjikha District. SB/IDP/CW/46-2009-L3**

**Lot 4. Repairs to the IDP housing in "Dosabi" and "Higiena" buildings in Tsalenjikha Town, in the kindergarten at No 55 Chichinadze St. in Jvari Settlement, in the dormitories at No 8 and 10 Kostava St and in the hotel at Rustaveli St. SB/IDP/CW/46-2009-L4**

##### **Brief description:**

The text of the tender announcement and the tender documentation were approved on 6 April 2009. The tender announcement was published on 8 April.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **8 700 000 Lari** for Lot 1, **10 500 000 Lari** for Lot 2, **9 900 000 Lari** for Lot 3 and **9 900 000 Lari** for Lot 4.
- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.
- c) The requirements set down in the law for the tender announcement and tender documentation were violated. Paragraph 4, article 12 and paragraph 3, article 14 of the law of Georgia on Public Procurements, precisely define those information and requirements which shall be submitted in detail. In this particular case, the tender announcement contains only part of those qualifying requirements which are given in the list of basic data of tender documentation. This is a gross violation of procedures for the conduct of bidding.

**The estimated cost of works comprised 7240106 Lari, although costs were not specified by Lots.**

Five companies participated in the tender and submitted the following prices:

1. Sani Ltd  
**Lot 3 – 1207553 Lari;**  
**Lot4 – 1186549 Lari;**

2. MG Tbilisi Ltd  
Lot4 – 1391662 Lari;

3. VIP Design Ltd  
Lot1 – 1128391 Lari,  
Lot2 – 1778850 Lari;

4. Block Georgia Ltd  
Lot1 – 1106338 Lari;  
Lot2 – 1741285 Lari;  
Lot3 – 1404188 Lari;  
Lot4 – 1281363 Lari;

5. Tsalenjikha Road Department Ltd  
**Lot1 – 1053403 Lari;**  
**Lot2 – 1703876 Lari;**  
**Lot4 – 1278779 Lari.**

**It is important to note that the bidding company of the best offer, Tsalenjikha Road Department Ltd, was disqualified for the lack of having the work experience similar in the complexity and significance. We agree with the decision to disqualify subcontractors Hydromsheni Ltd and Gza Ltd on the same ground. Their work experience did not meet the high barriers set by the qualification requirements. But the construction work experience of Tsalenjikha Road Department Ltd over the past three years comprised 13 700 000 Lari. It therefore fully met the minimum qualification requirement for one Lot. According to paragraph 3, article 9 of the Ordinance #1, dated 3 January 2006, of Chairman of State Procurement Agency on the approval of regulation on the Rule for Implementing State Procurements, the disqualification of a subcontractor does not automatically cause the disqualification of a key bidding company. Accordingly, Tsalenjikha Road Department Ltd, given its work experience, could have been considered for Lot 1, which would have saved the budget means of about 50 000 Lari. Considering the above said, the disqualification of Tsalenjikha Road Department Ltd was illegal, increasing the budget spending by 50 000 Lari.**

**The winner in the tender was Block Georgia Ltd with the contractual price for Lot 1 at 1106345 Lari, for Lot 2 at 1741282 Lari, for Lot 4 at 1304925 Lari.**

The contract was signed on 25 May 2009.

The works were to be completed on 25 January 2010 for Lots 1, 2 and 4.

The construction works were supervised by Davit Giorgobiani.

**It is important to underline that the procurement is implemented during two years, representing a multi-year procurement which, pursuant to paragraph 1, article 9 of the Law of Georgia on Public Procurements, requires a prior consent from the Ministry of Finance and Agency for Procurement. However, materials do not contain a document certifying the consent from the above mentioned agencies which makes us think that this sort of agreement was not achieved at all.**

**The winner in the tender for Lot 3 was Sani Ltd with the contractual price 1271346 Lari.**

The contract was signed on 10 June 2009.

The works were to be completed on 12 November 2009.

The construction works were supervised by Davit Giorgobiani.

**On 27 August 2009, representatives of the engineering design organization and local municipality identified the need for additional works on Lot 3. Moreover, on the basis of a request from Tsalenjikha municipality, the procurement was slimmed down to exclude the rehabilitation of local council building in Mujava Village (cost of works – 157872 Lari). This led to the decrease of the cost of contract from 1271346 Lari by 149944 Lari to 1121401 Lari.**

**Accordingly, on 27 August 2009, the agreement was signed on the increase of the cost of contract by about 7928 Lari (157872-149944=7928), pushing up the price of tender by 0,7 percent (7928/1113470\*100=0,7%). However, the procurement materials do not contain a document evidencing the circumstances indicated as the grounds for the amendment.**

**Such an insignificant change can be considered valid. It should also be noted here that this is the first time when the cost of contract has been increased by such a small amount.**

As the deadline is 25 January 2010 for the completion of works on Lot 1, Lot 2 and Lot 4, while 12 November is set for the completion of Lot 3, the additional documentation, certifying the completion of works and

corresponding payments, should be requested for further scrutiny.

**The materials provided with the letter N669-g/10 dated 17 March 2010 reveal that on 11 January 2010 the contract was amended for the second time upon the request of the supplier. Under this amendment the cost of works decreased from 1615490 Lari by 28508 Lari to 1586981 Lari. The deadline for the completion of works was set on 25 February 2010.**

Thus, it shows that the contract was already amended once increasing the cost of contract from 1106345 Lari to 1615490 Lari. However, the provided materials do not contain documentation, with relevant cost estimate and addendum to the contract, evidencing the necessity of making this change.

**On 9 March 2010 the contract was amended for the third time decreasing the cost of works from 1586981 Lari by 3833 Lari to 1583148 Lari, thus increasing the tender price by 43 percent in total. (476803/1106345\*100=43%). It is noteworthy that the procurement materials do not contain documentation (including cost estimate), evidencing the necessity of making these three changes.**

On 24 February 2010, the MDF received a notification from the supplier on the completion of works.

On 9 March 2010, the parties drew up a delivery-acceptance act saying that the works were completed on 24 February 2010.

**The materials provided with the letter N669-g/10 dated 17 March 2010 reveal that there is only one addendum dated 23 February 2010 available in regards to SB/IDP/CW/46-2009 Lot N2. The two previous changes to the contract are missing from among the procurement material. According to the change the cost of contract increased from 51519 Lari to 2480833. In total the cost of contract increased from 1741282 Lari to 739551 thus making up almost 42 percent increase in the tender price. (739551/1741282\*100=42%). It is important to note that two previous changes as well as cost estimates evidencing the circumstances causing these changes are missing in the materials.**

The deadline for the completion of works was extended until 25 March 2010.

**The materials provided with the letter N669-g/10 dated 17 March 2010 reveal that on 6 November 2009, the third amendment was made to SB/IDP/CW/46-2009 Lot N3 (1271346 Lari), increasing the cost of contract from 1181264 Lari by 93481 Lari to 1274745 Lari. The deadline for the completion of works was set on 27 November 2009.**

**As it was revealed the contract was amended for the second time and the cost of contract, determined under the first amendment, increased from 1121401 Lari to 1181264 Lari. However, the provided materials do not contain documentation, with relevant cost estimate and addendum to the contract, evidencing the necessity of making this change**

On 26 November 2009 the MDF received a notification from Sani Ltd on the completion of works.

**On 12 October 2009, the contract was amended for the fourth time. Under this amendment the cost of works decreased from 1274745 Lari by 35205 Lari to 1239540 Lari on the basis of the clarification of work volumes after the completion of works. It is noteworthy that the procurement materials do not contain documentation (including cost estimate), evidencing the necessity of making the change. It is also important to note that the date of the fourth change was indicated incorrectly – the fact is that the third change was made on 6 November 2009 and it would be impossible to make the fourth amendment in October.**

**In total, the tender price increased from 1113470 Lari to 126070 Lari pushing up the cost of contract by about 11 percent. (126070/1113470\*100=11%).**

**On 8 December 2009, the parties drew up a delivery-acceptance act regarding SB/IDP/CW/46-2009 Lot N3, saying that the works completed on 27 November 2009.**

**The materials provided with the letter N669-g/10 dated 17 March 2010 reveal that Block Georgia Ltd submitted an application concerning SB/IDP/CW/46-2009 Lot N4 to the MDF and bearing in minds that “repair works started with delays since the request of inhabitants (in the village of Jvari: hotel and N8 and N10, Kostava Street) necessitated the preparation of new drawings for the interior design”, requested the extension of the set deadline for the completion of works until 25 February 2010. On the basis of the above mentioned application the contract was amended for the second time on 20 January 2010, postponing the deadline for the completion of works until 25 February 2010. How strange it might seem, however, the agreement makes reference to harsh climatic conditions as**

**to the ground for the extension of the deadline instead of quoting the reason which was stated in the application of the supplier. All the above said proves that amendments to contracts and extension of terms for the completion of works were made voluntarily without the existence of objective grounds or scrutiny thereof.**

**It is also noteworthy that the clarification material does not include information on the amendment of the contract for the second time.**

**On 9 March 2010, the contract was amended for the third time, decreasing the cost of contract from 1591155 Lari by 17438 Lari to 1573716 Lari. In the end, the tender price increased from 1304925 Lari by 268791 Lari to 1573716 Lari, thus making up about 20 percent increase in the tender price ( $20\% = 268791/1304925 * 100$ ). It is also noteworthy that the procurement material provided after the clarification does not include documentation (including cost estimate) evidencing the above mentioned changes.**

**On 24 February 2010, the MDF received a notification from the supplier on the completion of works.**

**On 9 March 2010, the parties drew up a delivery-acceptance act on the completion of works on 24 February 2010.**

#### **Tender Package No SB/IDP/CW/47-2009**

##### **Object of the tender –**

**Lot No1. Repairs to the IDP housing in the administrative building of the forestry of Chkhorotsku Town, in the kindergarten in Khabume, in buildings No1 and 2 in of the vocational school and in public school No3. SB/IDP/CW/47-2009-L1**

**Lot 2. Repairs to the IDP housing in the tea farm building of Lesichine Village, in kindergarten No3 of Chkhorotsku Town, in the kindergarten of Kvedachkorotsku, in the collective farm building of Dzumi Village, in the former kindergarten of Moidanakhe and in the kindergarten of Lesichine Village of Chkhorotsku District. SB/IDP/CW/47-2009-L2**

##### **Brief description:**

The text of the tender announcement and the tender documentation were approved on 10 April 2009. The tender announcement was published on 11 April.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **7 300 000 Lari** for Lot 1, and **7 400 000 Lari** for Lot 2.
- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.
- c) The requirements set down in the law for the tender announcement and tender documentation were violated. Paragraph 4, article 12 and paragraph 3, article 14 of the law of Georgia on Public Procurements, precisely define those information and requirements which shall be submitted in detail. In this particular case, the tender announcement contains only part of those qualifying requirements which are given in the list of basic data of tender documentation. This is a gross violation of procedures for the conduct of bidding.

The estimated cost of works comprised 4930770 Lari, although costs were not specified by Lots.

Four companies participated in the tender and submitted the following prices:

1. Sani Ltd  
Lot 1 - 1000769 Lari;  
**Lot 2 - 949195 Lari;**

2. Gilmari 2 Ltd  
**Lot 1 - 903893 Lari;**

3. Mshenebeli Ltd  
Lot 1 - 988050 Lari;

4. Block Georgia Ltd  
Lot1 - 1086529 Lari;  
Lot2 - 1006442 Lari.

**The winner in the tender was Gilmari 2 Ltd with the contractual price for Lot 1 at 907052 Lari.**

The contract was signed on 22 May 2009.

The works were to be completed on 15 December 2009 for Lot 1.

The construction works were supervised by Davit Giorgobiani.

**On 4 August 2009, upon the letter of Chkhorotsku municipality, representatives of the engineering design organization identified the need for additional works on Lot 1. Therefore, on the basis of an explanatory note of 14 September, drawn up by an MDF representative, the cost of contract increased from 907052 Lari by 14191 Lari to 921244 Lari.**

**Accordingly, on 27 August 2009, the agreement was signed on the increase of the cost of contract. The mentioned amendment pushed up the price of tender by 1,5 percent ( $14191/907052 * 100 = 1,5\%$ ).**

Such an insignificant change can be considered valid. It may be caused by minor inaccuracies in the design documentation.

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 28 December 2009, the contract was amended the second time, decreasing the cost of contract from 921244 Lari by 168808 Lari to 752435 Lari. The ground for the amendment was, as quoted, volume of works clarified by representatives of the engineering design organization. It is important to note that the procurement was slimmed down to exclude the 5<sup>th</sup> position "buildings N1 and N2 of the vocational school - 25734 Lari."

On 16 December 2009, the parties drew up the delivery-acceptance act saying that the works were completed on 10 December 2009, although an official written notification on the part of the company to the MDF that the works were completed was not found in the materials.

**The winner in the tender for Lot 2 was Sani Ltd with the contractual price 949195 Lari.**

The contract was signed on 10 June 2009.

The works of Lot 2 were to be completed on 31 December 2009.

The construction works were supervised by Davit Giorgobiani.

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 6 October 2009, the contract on Lot2 was amended, increasing the cost of contract from 949195 Lari by 354852 Lari to 1304048 Lari. The ground for the amendment was, as quoted, the increase in the volume of construction works, which was certified by representatives of the engineering design organization and local municipality. The amendment increased the cost by about 37 percent ( $354852 / 949195 * 100 = 37\%$ ).

On 30 November 2009, the contract was amended the second time, increasing the cost of contract from 1304048 Lari by 188493 Lari to 1492541 Lari. The ground for the amendment was, as quoted, the increase in the volume of construction works, which was certified by representatives of the engineering design organization and local municipality. In total the cost increased by 57 percent ( $543345 / 949195 * 100 = 57\%$ ).

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring

entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. The provided materials did not make it evident whether such circumstances existed, but such a big amount of change (57%) provides the ground to assume that they existed.

**On 13 January 2010, the parties drew up the delivery-acceptance act saying that the works were completed on 31 December 2009, although an official written notification on the part of the company to the MDF that the works were completed was not found in the materials.**

#### **Tender Package No SB/IDP/CW/48-2009**

##### **Object of the tender –**

**Lot No1. Repairs to the IDP housing in the outpatient clinic of Gezati community, in the bathhouse and in buildings No 1 and 2 of the vocational school in Abasha District. SB/IDP/CW/48-2009-L1**

**Lot 2. Repairs to the IDP housing in Abashispiri school of Norio community, in Abasha Russian school, in kindergarten No 2 and in the vehicle service center "Satraktoro" of Abasha District. SB/IDP/CW/48-2009-L2**

##### **Brief description:**

The text of the tender announcement and the tender documentation were approved on 10 April 2009. The tender announcement was published on 11 April.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **7 900 000 Lari** for Lot 1, and **7 500 000 Lari** for Lot 2.
- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.
- c) The requirements set down in the law for the tender announcement and tender documentation were violated. Paragraph 4, article 12 and paragraph 3, article 14 of the law of Georgia on Public Procurements, precisely define those information and requirements which shall be submitted in detail. In this particular case, the tender announcement contains only part of those qualifying requirements which are given in the list of basic data of tender documentation. This is a gross violation of procedures for the conduct of bidding.

The estimated cost of works comprised 2332704 Lari, although costs were not specified by Lots.

Four companies participated in the tender and submitted the following prices:

1. Sani Ltd  
Lot 1 – 1009465 Lari;  
Lot 2 – 758803 Lari;

2. Axis Ltd  
**Lot 1 – 825408 Lari;**  
**Lot 1 - 633000 Lari**

3. Prizma Ltd  
Lot 1 – 1162617 Lari;  
Lot 2 – 909984 Lari;

4. Dagi Ltd  
Lot1 – 1046569 Lari;  
Lot2 – 814841 Lari.

**The winner in the tender was Axis Ltd with the contractual price for Lot 1 at 825408 Lari and for Lot 2 at 633017 Lari.**

The contract was signed on 28 May 2009.

The works were to be completed on 28 November 2009 for Lot 1 and 28 October 2009 for Lot 2.

The construction works were supervised by Davit Karkarashvili.

**Representatives of the engineering design organization and Abasha municipality identified the need for additional works on Lot 1. Therefore, on the basis of an explanatory note of 31 August 2009, drawn up by an MDF representative, the cost of contract increased from 825408 Lari by 100788 Lari to 926196 Lari.**

**Accordingly, on 31 August 2009, the agreement was signed on the increase of the cost of contract. The mentioned amendment pushed up the price of tender by 12 percent (100788 /825408 \*100=12%).**

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 23 October 2009, the contract was amended, decreasing the cost of contract by 35757 Lari to 890439 Lari.

**Representatives of the engineering design organization and Abasha municipality identified the need for additional works on Lot 2. Therefore, on the basis of an explanatory note of 31 August 2009, drawn up by an MDF representative, the cost of contract increased from 633017 Lari by 62144 Lari to 695162 Lari.**

**Accordingly, on 31 August 2009, the agreement was signed on the increase of the cost of contract. The mentioned amendment pushed up the price of tender by 10 percent (62144 /633017 \*100=10%).**

After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 23 October 2009, the contract was amended, decreasing the cost of contract by 19867 Lari to 675294 Lari.

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. The provided materials did not make it evident whether such circumstances existed.

#### **Tender Package No SB/IDP/CW/49-2009**

##### **Object of the tender –**

**Lot No1. Repairs to the IDP housing in the building N1 and N2 in Bandza Village building of the vocational school at Mshvidoba St. in Martvili and in the tea factory in the Chkini village in Martvili District**

##### **Brief description:**

The text of the tender announcement and the tender documentation were approved on 10 April 2009. The tender announcement was published on 11 April.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **8 100 000 Lari**.
- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

**The estimated cost of works comprised 1350921 Lari.**

Three companies participated in the tender and submitted the following prices:

1. Mshenebeli Ltd – 1029488 Lari;
2. **Gilmari 2 Ltd- 960656 Lari;**
3. Dagi Ltd – 1060697 Lari.

**The winner in the tender was Gilmari 2 Ltd with the contractual price for Lot 1 at 960656 Lari, which comprised 71 percent of the estimated cost of procurement.**

The contract was signed on 22 May 2009.

The works were to be completed on 15 November 2009.

The construction works were supervised by Davit Karkarashvili.

**On 13 August 2009, representatives of the engineering design organization and Abasha municipality identified the need for additional works. Moreover, an MDF representative indicated the need for the reinforcement works to the building of vocational school as the ground for the amendment. However, the amendment affected not only the cost of works for the abovementioned building but also for other buildings too. The increase in the cost of rehabilitation works to the vocational school was also caused by the funding of other works.**

**It is important to note that except for the explanatory note of the MDF employee on the need of additional works, no other document can be found among the procurement materials, evidencing this need.**

**On the basis of the above mentioned, the cost of contract increased from 960656 Lari by 165058 Lari to 1125714 Lari. Accordingly, on 13 August 2009, the agreement was signed on the increase of the cost of contract. The mentioned amendment pushed up the price of tender by 17 percent ( $165058/960656*100=17\%$ ).**

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. The provided materials did not make it evident whether such circumstances existed, although a high amount of change (17%) provides the ground to assume that they existed.

**After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 5 November 2009, the contract was amended again, postponing the deadline for the completion of works to 5 December 2009.**

**On 27 November 2009, the contract was amended for the third time, decreasing the cost of works by 89019 Lari to 1036694 Lari.**

**On 16 December 2010, the parties drew up the delivery-acceptance act saying that the works were completed on 5 December 2009, although an official written notification on the part of the company to the MDF that the works were completed was not found in the materials.**

**Tender Package No SB/IDP/CW/50-2009****Object of the tender –**

**Lot No1. Repairs to the IDP housing in houses No 1 and 2 of the blind's society in Zugdidi Town and buildings No2 and 3 of the hippodrome in Rukhi Village. SB/IDP/CW/50-2009-L1**

**Lot 2. Repairs to the IDP housing in the vocational school and its dormitory in Oktomberi Village of Zugdidi District. SB/IDP/CW/50-2009-L2**

**Lot 3. Repairs to the IDP housing in the shop "Sakmiani Ezo", in the dormitory of Ganmukhuri Village, water supply office buildings No 1, 2 and 3 in Akhalabastumani Village, meat processing plant and reinforced concrete factory in Urulu Village of Zugdidi District. SB/IDP/CW/50-2009-L3**

**Lot 4. Repairs to the IDP housing in houses No 1,2,3,4,5 and 6 and the dormitory in Khetseri Settlement in Narazeni Village of Zugdidi District. SB/IDP/CW/50-2009-L4**

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Brief description:

The text of the tender announcement and the tender documentation were approved on 10 April 2009. The tender announcement was published on 11 April.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **7 500 000 Lari** for Lot 1, **8 700 000 Lari** for Lot 2, **9 000 000 Lari** for Lot 3 and **7 500 000 Lari** for Lot 4.
- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

The estimated cost of works comprised 5651515 Lari, although costs were not specified by Lots.

Three companies participated in the tender and submitted the following prices:

1. Sani Ltd

Lot 1 – 734183 Lari;  
Lot 2 – 1157143 Lari;  
Lot 3 - 1662541 Lari

2. New Energy Ltd

Lot1 – 870523 Lari,  
Lot2 – 1368266 Lari;  
Lot 3 – 448760 Lari:  
Lot 4 – 869557 Lari;

3. Block Georgia Ltd

**Lot1 – 700459 Lari;**  
**Lot2 – 1036172 Lari;**  
**Lot4 – 681510 Lari;**

**The winner in the tender for Lots 1,2 and 4 was Block Georgia Ltd with the contractual price for Lot 1 at 700503 Lari, for Lot 2 at 1036208 Lari, for Lot 4 at 681554 Lari.**

The tender on Lot 3 completed with negative result.

The contract was signed on 25 May 2009.

The works on Lot 1 were to be completed on 25 October 2009.

**The works on Lot 2 were to be completed on 25 January 2010.**

The works on Lot 4 were to be completed on 25 October 2009.

The construction works were supervised by Vazha Kirtava.

**It is important to underline that the public procurement on Lot 2 is implemented during two years, representing a multi-year procurement which, pursuant to paragraph 1, article 9 of the Law of Georgia on Public Procurements, requires a prior consent from the Ministry of Finance and Agency for Procurement. However, materials do not contain a document certifying the consent from the above mentioned agencies which makes us think that this sort of agreement was not achieved at all.**

As the deadline is 25 October 2009 for the completion of works on Lot 1 and Lot 4 and 25 January 2010 for Lot 2, the additional documentation, certifying the completion of works and corresponding payments, should be requested for further scrutiny.

The materials provided with the letter N669-g/10 dated 17 March 2010 reveal that on 20 November 2009, an amendment was made to the contract on SB/IDP/CW/50-2009 Lot N1 and the contractual price increased from 700503 Lari by 138980 Lari to 839484 Lari. The deadline for the completion of works was set on 25 January 2010. With this amendment the tender price of the contract increased by about 20 percent ( $138980/700503 *100=20\%$ ). It should be noted that the additionally provided procurement material does not contain the ground for and the cost estimates of these changes.

On 22 January 2010, the MDF received a notification from Block Georgia Ltd on the completion of works.

On 2 February 2010, the parties drew up a delivery-acceptance act on SB/IDP/CW/50-2009 Lot N1, saying that the works were completed on 22 January 2010.

The materials provided with the letter N669-g/10 dated 17 March 2010 reveal that on 20 November 2009, an amendment was made to the contract on SB/IDP/CW/50-2009 Lot N2 and the contractual price increased from 1036208 Lari by 419874 Lari to 1456083 Lari. The deadline for the completion of works was set on 25 February 2010. With this amendment the tender price of the contract increased by about 41 percent ( $419874 /1036208*100=41\%$ ). It should be noted that the additionally provided procurement material does not contain the ground for and the cost estimates of these changes.

On 24 February 2010, the parties drew up a delivery-acceptance act on the completion of works.

On 9 March 2010, the parties drew up a delivery-acceptance act on SB/IDP/CW/50-2009 Lot N2, saying that the works were completed on 24 February 2010.

The materials provided with the letter N669-g/10 dated 17 March 2010 reveal that on 20 November 2009, an amendment was made to the contract on SB/IDP/CW/50-2009 Lot N4 and the contractual price increased from 681554 Lari by 472952 Lari to 1154506 Lari. The deadline for the completion of works was set on 25 January 2010. With this amendment the tender price of the contract increased by about 69 percent ( $472952/681554 *100=69\%$ ). It should be noted that the additionally provided procurement material does not contain the ground for and the cost estimates of these changes

On 22 January 2010, the parties drew up a delivery-acceptance act on the completion of works.

On 3 February 2010, the parties drew up a delivery-acceptance act on SB/IDP/CW/50-2009 Lot N4, saying that the works were completed on 22 January 2010

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. The provided materials do not allow to identify whether or not such circumstances existed, however, a large size of increase (**20%, 41% and 69%**) raises doubts about the existence of such circumstances.

### **Tender Package No SB/IDP/CW/50-2009 Lot 3 (repeated tender)**

#### **Object of the tender –**

**Lot 3. Repairs to the IDP housing in the shop “Sakmiani Ezo”, in the dormitory of Ganmukhuri Village, water supply office buildings No 1, 2 and 3 in Akhalabastumani Village, meat processing plant and reinforced concrete factory in Urulu Village of Zugdidi District. SB/IDP/CW/50-2009-L3**

Brief description:

The text of the tender announcement and the tender documentation were approved on 2 June 2009. The tender announcement was published on 1 June 2009.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of

construction works worth of **9 000 000 Lari** for Lot 3.

- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

#### **The estimated cost of works comprised 1939287 Lari.**

Five companies participated in the tender and submitted the following prices:

1. Sani Ltd – **1306919 Lari.**
2. Artes Ltd – **1325133 Lari;**
3. VIP Design Ltd – **1326484 Lari.**
4. JSC Monolitmsheni – **1459704 Lari;**
5. Dagi Ltd – **1731179 Lari**

The bidding companies offering best prices, Sani Ltd, Artes Ltd and VIP Design Ltd, were disqualified for the failure to submit complete qualification documentation. We share this decision, which was taken without any violation.

**The winner in the tender was JSC Monolitmsheni with the contractual price at 1465428 Lari, which comprised about 76 percent of the estimated cost of procurement.**

The contract was signed on 22 July 2009.

The works on Lot 1 were to be completed on 24 March 2010.

The construction works were supervised by Vazha Kirtava.

**It is important to underline that the public procurement is implemented during two years, representing a multi-year procurement and pursuant to paragraph 1, article 9 of the Law of Georgia on Public Procurements, requires a prior consent from the Ministry of Finance and Agency for Procurement. However, materials do not contain a document certifying the consent from the above mentioned agencies which makes us think that this sort of agreement was not achieved at all.**

As the deadline for the completion of works is 24 March 2010, the additional documentation, certifying the completion of works and corresponding payments, should be requested for further scrutiny.

#### **Tender Package No SB/IDP/CW/51-2009**

#### **Object of the tender –**

**Lot 1. Repairs to the IDP housing in the two-storied college in Poti Town and IDP houses in Vedzisi.**

Brief description:

The text of the tender announcement and the tender documentation were approved on 10 April 2009. The tender announcement was published on 11 April 2009.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **8 400 000 Lari.**
- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this

restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

**The estimated cost of works comprised 1869411 Lari.**

Six companies participated in the tender and submitted the following prices:

1. Mshenebeli Ltd – 1390001 Lari,
2. New Energy Ltd – 1708301 Lari;
3. Dagi Ltd – 1433472 Lari,
4. Sani Ltd – 1456154 Lari,
5. Gilmari 2 Ltd – 1246377 Lari,
- 6. Dasavletsakgazimsheni Ltd – 1213718 Lari.**

**The winner in the tender was Dasavletsakgazimsheni Ltd with the contractual price at 1213718 Lari, which comprised about 65 percent of the estimated cost of procurement.**

The contract was signed on 22 May 2009.

The works on Lot 1 were to be completed on 10 January 2010.

The construction works were supervised by Zaza Pirtskhalaishvili.

**It is important to underline that the public procurement is implemented during two years, representing a multi-year procurement which, pursuant to paragraph 1, article 9 of the Law of Georgia on Public Procurements, requires a prior consent from the Ministry of Finance and Agency for Procurement. However, materials do not contain a document certifying the consent from the above mentioned agencies which makes us think that this sort of agreement was not achieved at all.**

**On 13 August 2009, representatives of the engineering design organization and local municipality identified the need for additional works, which was also confirmed by an MDF representative in an explanatory note of 11 August 2009.**

**It is important to note that except for the explanatory note of the MDF employee on the need of additional works, no other document can be found among the procurement materials evidencing this need.**

**On the basis of the above mentioned, the cost of contract increased from 1213718 Lari by 132433 Lari to 1346151 Lari. Accordingly, on 13 August 2009, the agreement was signed on the increase of the cost of contract. The mentioned amendment pushed up the price of tender by 11 percent (132433/1213718 \*100=11%).**

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. The provided materials did not make it evident whether such circumstances existed, although a high amount of change (11%) provides the ground to assume that they existed.

As the deadline for the completion of works is 10 January 2010, the additional documentation, certifying the completion of works and corresponding payments, should be requested for further scrutiny.

**The materials provided with the letter N669-g/10 dated 17 March 2010 reveal that on 8 January 2010, a second amendment was made to the contract on SB/IDP/CW/51-2009 extending the deadline for the completion of works to 25 February 2010.**

**On 22 February 2010, the contract was amended for the third time postponing the deadline for the completion of works until 12 April 2010.**

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**Tender Package No SB/IDP/CW/52-2009**

**Object of the tender –**

**Lot 1. Reconstruction of “Akhali Chiatura” hotel and driving school buildings in Chiatura Town.**

Brief description:

The text of the tender announcement and the tender documentation were approved on 10 April 2009. The tender announcement was published on 11 April 2009.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **6 000 000 Lari**.
- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

**The estimated cost of works comprised 845400 Lari.**

Two companies participated in the tender and submitted the following prices:

1. Aguna Ltd – 626764 Lari,
2. Gilmari 2 Ltd – 555386 Lari,

**The winner in the tender was Gilmari 2Ltd with the contractual price at 555343 Lari, which comprised about 66 percent of the estimated cost of procurement.**

The contract was signed on 22 May 2009.

The works were to be completed on 15 October 2010.

The construction works were supervised by Tariel Svanadze.

**After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 13 October 2009, the contract was amended, postponing the deadline for the completion of works to 30 November 2009.**

**On 23 October 2009, the contract was amended the second time, increasing the cost of works from 555343 Lari by 368373 Lari to 923717 Lari. The ground for the amendment was, as quoted, the increase in the volume of construction works, which was certified by representatives of the engineering design organization and local municipality. The amendment increased the cost by about 66 percent ( $368373 / 555343 * 100 = 66\%$ ).**

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. The provided materials did not make it evident whether such circumstances existed, although a high amount of change (66%) provides the ground to assume that they existed.

**On 11 December 2010, the parties drew up the delivery-acceptance act saying that the works were completed on 30 November 2009, although an official written notification on the part of the company to the MDF that the works were completed was not found in the materials.**

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**Tender Package No SB/IDP/CW/53-2009**

**Object of the tender –**

**Lot 1. Repairs to the IDP housing in buildings No 1 and 3 in Tbilsresi and nine-storied house at Agmashenebli Street in Gardabani Town.**

Brief description:

The text of the tender announcement and the tender documentation were approved on 7 May 2009. The tender announcement was published on 9 May 2009.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **7 200 000 Lari**.
- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

**The estimated cost of works comprised 1178013 Lari.**

Nine companies participated in the tender and submitted the following prices:

1. **Monolitmsheni Ltd – 819350 Lari,**
2. **Grusia Ltd – 812906 Lari;**
3. Dagi Ltd – 823679 Lari,
4. Sani Ltd – 858828 Lari,
5. Iberia Ltd – 1160633 Lari,
6. SSG Iberia Ltd – 1065566 Lari.
7. Axis Ltd – 968949 Lari,

**For the aim of comparing unit and overall prices, the proposal of the second best bidding company by price was decreased from 819350 Lari to 806881 Lari by the MDF representative. Therefore, the prices stated upon the opening of packages changed and instead of Grusia Ltd the winner became Monolitmsheni Ltd.**

**The winner in the tender was Monolitmsheni Ltd with the contractual price at 806881 Lari, which comprised about 68 percent of the estimated cost of procurement.**

The contract was signed on 9 June 2009.

The works were to be completed on 15 December 2010.

The construction works were supervised by Kakha Bolkvadze.

**After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 16 November 2009, the contract was amended, increasing the cost of works from 806881 Lari by 263900 Lari to 1070781 Lari. The ground for the amendment was, as quoted, the increase in the volume of construction works. The amendment increased the cost by about 3 percent (263900 /806881 \*100=33%).**

**It is important to underline that most of the increase in the volume of works accounted for dismantling works and hidden works (for example, plastering).**

**On 28 December 2009, the contract was amended the second time, decreasing the cost of works from 1070781 Lari by 82206 Lari to 988575 Lari. The ground for the amendment was the measurements of actually performed works after the completion of the works. However, one fact is very important**

**to note - volumes and accordingly, costs of works in the cost-estimate corrected for the second time, increase or, vice versa, decrease in such work positions, which were corrected and increased during the first amendment as well. The above said proves that all the three stages of the procurement - 1. the procurement of engineering design and cost estimate documentation, 2. the completion of the tender documentation by a purchaser and 3. frequent changes to the key integral part of the contract, the cost estimate - exclude each other partially and are therefore contradictory.**

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. The provided materials did not make it evident whether such circumstances existed, although a high amount of change (33%) provides the ground to assume that they existed.

**On 28 December 2010, the parties drew up the delivery-acceptance act saying that the works were completed on 14 December 2009, although an official written notification on the part of the company to the MDF that the works were completed was not found in the materials.**

#### **Tender Package No SB/IDP/CW/54-2009**

##### **Object of the tender –**

**Lot 1. Reconstruction of the kindergarten into 24 apartment buildings for the IDPs at Nikea St. in Kutaisi Town.**

##### **Brief description:**

The text of the tender announcement and the tender documentation were approved on 8 May 2009. The tender announcement was published on 11 May 2009.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **6 000 000 Lari**.
- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

##### **The estimated cost of works comprised 493500 Lari.**

Fourteen companies participated in the tender and submitted the following prices:

1. Monolitmsheni Ltd – 384722 Lari,
2. Construction industrial union Imereti 1 Ltd – 359712 Lari;
3. Dagi Ltd – 379946 Lari,
4. **Iberia 21 Ltd – 331571 Lari,**
5. Nova Ltd – 378626 Lari,
6. Dasavletsakgazmsheni Ltd- 332965 Lari,
7. Industria 2 Ltd – 358422 Lari,
8. Imereti 2000 Ltd – 327391 Lari,
9. **Axis Ltd – 298652 Lari,**
10. Grusia Ltd – 402091 Lari,
11. VIP Design Ltd – 334872 Lari,

12. Rekonstrukcia + Ltd – 431801 Lari,
13. Block Georgia Ltd – 348479 Lari,
14. Oda Ltd – 335254 Lari,

**The winner in the tender was Iberia 21 Ltd with the contractual price at 331571 Lari, which comprised about 67 percent of the estimated cost of procurement.**

The contract was signed on 17 July 2009.

The works were to be completed on 5 October 2010.

The construction works were supervised by Anzor Andghuladze.

**After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 2 October 2009, the contract was amended, increasing the cost of contract from 331571 Lari by 38664 Lari to 370235 Lari. The ground for the amendment was, as quoted, the increase in the volume of construction works, which was certified by representatives of the engineering design organization, local municipality purchaser and supplier. The amendment increased the cost by about 12 percent ( $38664 / 331571 *100=12\%$ ).**

**On 12 October 2009, the contract was amended the second time, decreasing the cost of works insignificantly - from 370235 Lari by 1256 Lari.**

Pursuant to paragraph 5, article 21 of the law of Georgia on Public Procurement, the terms of the contract signed with the supplier shall not be changed if this change increases the cost of contract for a procuring entity or worsens the conditions, except for the cases stipulated in article 398 of the Civil Code. The cost of contract can be increased only if the circumstances envisaged by the Civil Code exist. In particular, if after the signing of the contract, circumstances have essentially changed or those understandings, which existed, have turned out to be wrong. The provided materials did not make it evident whether such circumstances existed, although a high amount of change (33%) provides the ground to assume that they existed.

**On 15 October 2010, the parties drew up the delivery-acceptance act saying that the works were completed on 5 October 2009, although an official written notification on the part of the company to the MDF that the works were completed was not found in the materials.**

#### **Tender Package No SB/IDP/CW/55-2009**

##### **Object of the tender –**

##### **Lot 1. Repairs to houses No 83, 85, 100, 103 in the military settlement in Khoni Town.**

Brief description:

The text of the tender announcement and the tender documentation were approved on 8 May 2009. The tender announcement was published on 11 May 2009.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **10 800 000 Lari**.
- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

**The estimated cost of works comprised 2375600 Lari.**

Twelve companies participated in the tender and submitted the following prices:

1. Monolitmsheni Ltd – 1654119 Lari,
2. Construction industrial union Imereti 1 Ltd – 1730800 Lari;
3. Dagi Ltd – 1530227 Lari,
4. Iberia Ltd – 1710281 Lari,
5. Iberia 21 Ltd – 1598244 Lari,
6. Vanti Ltd – 2058966 Lari,
7. Dasavletsakgazmsheni Ltd – 1495539 Lari.
8. Block Georgia Ltd – 1630551 Lari
9. New Energy Ltd – 1697319 Lari,
10. Grusia Ltd – 1624863 Lari,
11. **Axis Ltd – 1337713 Lari,**
12. Oda Ltd – 1610874 Lari,

**The winner in the tender was Axis Ltd with the contractual price at 1337713 Lari, which comprised about 6567 percent of the estimated cost of procurement.**

The contract was signed on 26 June 2009.

The works were to be completed on 24 February 2010.

The construction works were supervised by Tariel Svanadze.

**It is important to underline that the public procurement is implemented during two years, representing a multi-year procurement and pursuant to paragraph 1, article 9 of the Law of Georgia on Public Procurements, requires a prior consent from the Ministry of Finance and Agency for Procurement. However, materials do not contain a document certifying the consent from the above mentioned agencies which makes us think that this sort of agreement was not achieved at all.**

As the deadline for the completion of works is 24 February 2010, the additional documentation, certifying the completion of works and corresponding payments, should be requested for further scrutiny.

The materials provided with the letter N669-g/10 dated 17 March 2010 reveal that **on 12 February 2010, a second amendment was made to the contract on SB/IDP/CW/55-2009, increasing the cost of contract from 1833911 Lari by 10069 Lari to 1843980 Lari.**

**The deadline for the completion of the works was set on 24 March 2010.**

**As it shows the contract was already amended once, increasing the cost of contract from 1337713 Lari to 1833911 Lari. However, the documentation with the cost estimate and an addendum to the contract is missing from the additionally provided material. Cost estimate is also not available for the second amendment to the contract.**

**In total, the tender cost of contract increased from 1337713 Lari by 506267 Lari to 1843980 Lari, thus making a 38 percent increase in the tender price ( $506267/1337713*100=38\%$ ).**

#### **Tender Package No SB/IDP/CW/56-2009**

**Object of the tender –**

**Lot 1. Rehabilitation of the outside water supply and sewage network in the military settlement of Khoni Town.**

Brief description:

The text of the tender announcement and the tender documentation were approved on 10 June 2009. The tender announcement was published on 11 June 2009.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **10 500 000 Lari**.

- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

**The estimated cost of works comprised 1155200 Lari.**

Seven companies participated in the tender and submitted the following prices:

1. Imereti 1 Ltd - 699802 Lari,
2. New Energy Ltd - 934387 Lari;
3. Dagi Ltd - 690354 Lari,
4. El Rio Ltd - 802126 Lari,
5. Erisimedi Ltd- 650593 Lari.
6. **JSC Sakhidroenergomsheni - 610307 Lari,**
7. Daviti Ltd - 715766 Lari

**The winner in the tender was JSC Sakhidroenergomsheni with the contractual price at 610307 Lari, which comprised about 53 percent of the estimated cost of procurement.**

The contract was signed on 10 July 2009.

The works were to be completed on 10 November 2010.

The construction works were supervised by Tariel Svanadze.

**After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 20 November 2009, the parties drew up the delivery-acceptance act saying that the works were completed on 10 November 2009, although an official written notification on the part of the company to the MDF that the works were completed was not found in the materials. It is also important to note that the works were performed within the limits of 505380 Lari, i.e. 82 percent of the contract value. We hope that the remaining 18 percent is the result of saving and the company has performed a full volume of rehabilitation works.**

**Tender Package No SB/IDP/CW/57-2009**

**Object of the tender –**

**Lot 1. Rehabilitation of the outside water supply and sewage network in Kopitnari military settlement.**

Brief description:

The text of the tender announcement and the tender documentation were approved on 10 June 2009. The tender announcement was published on 11 June 2009.

It should be noted that a number of such requirements which do not overtly serve the aim of the law of Georgia on public procurement and represent some sort of administrative barriers were defined as qualifying requirements. The qualification requirements were:

- a) Financial documentation certifying the financial state of the firm for the last three years. Thus, this requirement prevented firms established two or one year ago from participating in the tender. The requirement set for the work experience was that a bidding company must have the turnover of construction works worth of **7 200 000 Lari**.
- b) The following qualification requirement is especially worth mentioning. Companies were required to submit a document certifying the absence of any back taxes. We think that when owing taxes is not set as a barrier to the participation in the tender - which is an arguable issue as we believe that this restriction is necessary to identify the paying capacity and reliability of a bidding company - there is not any sense in requiring such information. A question arises, if a bidding company has the debt of 200 000 or 500 000 Lari, how can it be disqualified by the commission? Moreover, one should bear in mind that the above data is not evaluated by the evaluation priority coefficient and it is impossible to

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evaluate the competitiveness of a company in this respect. Given the above said we deem it unacceptable to require the submission of such a document from a bidding company.

- c) The requirements set down in the law for the tender announcement and tender documentation were violated. Paragraph 4, article 12 and paragraph 3, article 14 of the law of Georgia on Public Procurements, precisely define those information and requirements which shall be submitted in detail. In this particular case, the tender announcement contains only part of those qualifying requirements which are given in the list of basic data of tender documentation. This is a gross violation of procedures for the conduct of bidding.

**The estimated cost of works comprised 994400 Lari.**

Eight companies participated in the tender and submitted the following prices:

1. El Rio Ltd – 711550 Lari,
2. Prizma Ltd – 813771 Lari,
3. Gzebi Ltd – 787419 Lari,
4. Iberia Ltd – 687319 Lari,
5. JSC Sakhidroenergomsheni – 587079 Lari;
6. Rekonstrukcia + Ltd – 595525 Lari,
7. **Erisimedi Ltd – 550220 Lari.**
8. Block Georgia Ltd – 768754 Lari,

**The winner in the tender was Erisimedi Ltd with the contractual price at 550220 Lari, which comprised about 55 percent of the estimated cost of procurement.**

The contract was signed on 10 July 2009.

The works were to be completed on 7 December 2010.

The construction works were supervised by Anzor Andghuladze.

**After the clarification, the materials provided by the letter #379-g/10, dated 15 February 2010, revealed that on 18 December 2009, the parties drew up the delivery-acceptance act saying that the works were completed on 7 December 2009, although an official written notification on the part of the company to the MDF that the works were completed was not found in the materials.**

