

Georgian Government

Decree №426

August 17, 2018

Tbilisi

On Approval of the Rule for Development and Implementation of Public and Private Cooperation Project

Article 1

In accordance with Sub-clause "b" of first Clause of Article 37 of the Law of Georgia on Public and Private Cooperation "The Rule of Development and Implementation of Public and Private Cooperation Project" shall be approved.

Article 2

The Decree shall come into force upon the promulgation.

Prime Minister

Mamuka Bakhtadze

Rule for Development and Implementation Public and Private Cooperation Project

Article 1. General Provisions

The Rule of Development and Implementation of Public and Private Cooperation Project (hereinafter – the Rule) has been elaborated in compliance with the Law of Georgia on Public and Private Cooperation (hereinafter - the Law) and its aim is to define the regulation for the development and implementation of public and private co-operation project.

Article 2. Definition of Terms

1. Terms used in this Rule for the purposes of this Rule have the following meanings:

- a) **The Object of High Importance** - a list of highly important objects, based on the Law of Georgia on Public and Private Cooperation defined in accordance with the Decree of Georgian Government;
- b) **Methodical and Practical Guidelines** - a methodical and practical guide developed for implementing public and private cooperation projects in Georgia, which may be approved by the order of the Minister of Finance of Georgia and developed and periodically updated in collaboration with the Agency of Public and Private Cooperation;
- c) **Project** – the Project of Public and Private Cooperation;
- d) **Project Concept Card** – a description of a project, prepared during the project identification phase, before making the decision on conducting detailed feasibility study of the project. This Card includes (but not limited to) the information provided for in Article 7 of the Rule;
- e) **Project Cost** - all expenditures for full implementation of the public and private co-operation project; overall financial resources necessary to achieve the results, planned with the Project, including the initial investment expenses, as well as all other expenses required in the process of Project

fulfillment/implementation;

f) **Agency** – the Agency of Public and Private Cooperation;

g) **Best Standards and International Experience** - the best standards, which are established according to the legislative guidelines (occasionally updated) on infrastructural projects, developed by the International Trade Law Commission (UNCITRAL) of United Nations Organization and financed by the private sector; according to EU Directive (2014/23/EU) on granting concession, publications on public and private cooperation issue, developed by the international financial institutions and United Nations Organization and according to the studied international experience;

h) **Feasibility Study** – a feasibility study, conducted during the preparation of public and private cooperation project, established by Clause 6 of Article 13 of this Law and this Rule;

i) **Methodology of Price-quality Ratio** – The methodology that involves using the comparison tool of state sector for the comparison of implementation of the project (with the same specifications of results for the society) through public and private cooperation and through state procurement. It is necessary for the optimal distribution of risk and to prove that public and private cooperation gives a purely economic profit in order to achieve intended goal and is optimal way for accessibility and sustainability, and also provides price and the best quality match. The mentioned pricing methodology, including the methods of pricing, the process, the rule of using the comparison tool with the state sector and the calculated specifications, must specified in the methodological and practical manual;

j) **Contract** – a contract on public and private cooperation;

2. The terms used in this Rule, which are defined in the Law, have the meaning, defined by the Law.

Article 3. Public and Private Co-operation Regulation Sphere

1. Public and private co-operation may be carried out in any sector of public infrastructure and public service except for mining, oil and gas sectors and related research-development and/or scientific-research works.

2. The relations associated with the construction and/or other types of work and/or services belonging to the sectors, specified in Clause 1 of this Article, which according to the legislation of Georgian are not the main activities in the above-mentioned sectors, are governed by the legislation on public and private cooperation.

3. According to the Sub-clause “j” of Article 2 of the Law, the projects in the Energy Sector that include the guaranteed power purchase agreements, represent concession.

4. Support from the state/municipality the privatization/transfer for use/transfer with management rights of state/municipal property to a private partner and/or support in taking a license or permit (in the manner prescribed by applicable law) to implement the Project is not considered as public or private co-operation.

5. Five years shall be the minimum term of Contract of public and private cooperation.

Article 4. Project Stages

According to the procedure prescribed by the Law and this Rule, the public and private cooperation Project includes the following stages:

- a) Identification and initiation of the Project;
- b) Preparation of the Project;
- c) Selection of a private partner;
- d) Implementation of the Project;
- e) Further assessment of the Project implementation.

Article 5. Methodical and Practical Manual for Public and Private Co-operation

The Ministry of Finance of Georgia may, in coordination with the Agency, issue the methodological and practical manual for the public and private cooperation, aimed at providing methodological direction and guidelines for the authorized entity, for each stage of the Project implementation defined by the Article 4 of this Rule and which are in accordance with the Best Standards and International Experience.

Article 6. Identification of the Project

1. An authorized entity or the Agency identifies the potential project, upon request.
2. Potential Project shall be identified through the state development plan/strategy and/or municipal development strategy/action plan in mind, and/or be in compliance with the directions of development plan/strategy of Adjara/Abkhazia Autonomous Republic of and/or meet the needs of a relevant sector identified/discovered by the authorized entity and/or serve the satisfaction of public interest of the priority sector determined by the government.
3. Identification of a potential project can be carried out through making an initiative proposal.
4. Entry of a facility to the list of potential power plants to be built by a sectoral ministry in the energy sector of Georgia and/or on the official website of a sectoral ministry in the list of potential power plants to be built in Georgia is not an identification of a potential project.

Article 7. Project Concept Card and Pre-feasibility Study

1. In the identification stage of the Project, the entity authorized for the potential Project, identified under Article 6 of this Rule, shall prepare the Project Concept Card.
2. The Project Concept Card shall include at least the following information from the Pre-feasibility Study:
 - a) A preliminary assessment of the Project implementation needs, during which must be proven compliance of the Project with the public interest, with the priority sectors, determined by the government for the implementation of public and private cooperation and/or the directions stipulated by the state development plan/strategy and/or the strategy/action plan of the municipality development and/or the directions stipulated by the plan/strategy of Adjara/Abkhazia Autonomous Republic and/or meet the needs of respective sector identified/discovered by the competent authority, which aims meeting public interest through forming of public infrastructure and/or improving of available infrastructure and/or providing public services;
 - b) A preliminary assessment of the Project cost, at least, should contain the information about the size/volume/characteristics of the Project, as well as the information about financing required for the

implementation of the Project (including: information about financing required for the construction, annual maintenance and/or operation). While preliminary evaluating the cost of the Project, it is also necessary to determine the possibility of generating the income from the Project;

c) A preliminary assessment of the Project implementation through the public and private co-operation, during which the type (concessional/ not concessional) of public and private co-operation shall be determined as well as the functions of public and private partnership and also, the benefit to be received by the Project implementation shall be evaluated. In addition, at this stage, the risks associated with the Project shall be evaluated and the research, necessary during the preparation of the Project shall be identified;

d) A preliminary assessment of availability of finances and fiscal risks, during which the impact of potential public and private co-operation project on the budget of a public partner/authorized entity shall be determined during all phases of the Project. If possible, for a private partner to create the acceptable conditions for implementing the Project, fiscal risks related to the implementation of the project shall be assessed as well.

3. The Project Concept Card may be prepared according to the sample, developed by the methodical-practical manual.

Article 8. Initiation of the Project

1. The requirements of this Article shall apply to all projects except for small projects unless otherwise specified in the Rule herein.

2. An authorized entity submits the Concept Card of the Project to the Agency and the Ministry of Finance for consideration.

3. Within one month following the submission of the Project Concept Card by the authorized entity, the Agency shall prepare the recommendations and the Ministry of Finance of Georgia shall make the conclusion on the Project Concept Card. The Ministry of Finance of Georgia and the Agency shall be entitled to request from the authorized entity making amendments and re-submitting the Project Concept Card, including if the Concept Card does not meet the requirements set forth in this Rule.

4. The authorized entity shall submit the concept of the Project together with the recommendations of the Agency and the conclusion of the Ministry of Finance of Georgia to the Government of Georgia for review.

5. Based on the submitted documents according to this Article, the Government of Georgia shall make a decision on approval of the concept of the Project, on refusal to approve the concept of the Project or on re-processing of the concept of the Project, in accordance with the criteria envisaged by Clause 4 of Article 13 of this Law.

6. The Government of Georgia has the right to request a more in-depth analysis of the Project concept and/or require the authorized entity to re-process the concept, taking into account the Agency's recommendations and/or the conclusion made by the Ministry of Finance.

7. A contract signed without observing the procedures provided for in this Article is invalid and does not cause legal consequences.

Article 9. Decision on Project Preparation

1. If the Government of Georgia approves the concept of the Project, the authorized entity conducts preparatory work on the project and, if necessary, will ensure the participation of the Agency and the Ministry of Finance of Georgia, within their competence.
2. In the course of the preparation of the Project, the authorized entity, in accordance with this Rule, shall prepare the financial, technical and economic research/analysis, which will evaluate the following:
 - a) The Project cost and expected social and economic consequences of its implementation;
 - b) Access to finances of the authorized entity for the implementation of the Project in case of co-financing from the state;
 - c) Evaluation of social and environmental impact on implementation of the Project and the measures envisaged by the legislation of Georgia to be taken to minimize the results of negative impacts.
3. The goal of Feasibility Study is to confirm and develop every aspect of a preliminary Feasibility Study, which is the basis for the evaluation of specified accessibility to the funds, study fiscal risks and correlation of the quality with the value.
4. In the energy sector, the Feasibility Study of the projects on installed capacity over 100 MW shall be prepared by an independent party.

Article 10. Analysis of Cost Benefit of the Project and Assessment of Socio-economic Impact

The Feasibility Study of the Project shall include the qualitative assessment of socio-economic result of the Project, as well as the cost-benefit analysis, which determines and measures (as much as possible) the influence of the Project on the community in quantitative and monetary terms (social costs and benefits of the Project, based on the estimates of alternative costs), its socio-economic results, including the effect on employment, and confirms the following:

- a) Positive qualitative socio-economic benefits expected as a result of the implementation of the Project;
- b) Positive net benefit of the Project (the benefit of excluding the relevant costs), including the quantitatively estimated positive social and economic impact;
- c) Public access to the offered tariff/service cost/price/fee, if the private partner receives compensation from the end user.

Article 11. Assessment of Environmental Impact

If the Project is subject to the environmental impact assessment, the Feasibility Study shall include the report of environmental impact assessment of the Project prepared in accordance with the Environmental Assessment Code, which (if applicable) shall be attached to the environmental decision, provided by the same Code.

Article 12. Viability and Profitability of the Project

1. The Feasibility Study should include the financial model of the Project, which will take into account and consider all the aspects of relevant Feasibility Study. With the help of methodological and practical manual, the list of other issues that should be considered in the Feasibility Study document can be determined.

2. The Project shall be positively assessed as a result of viability research, if the research finds that:
 - a) The Project is technically feasible;
 - b) There is a technical survey, which states that the Project is ready for the implementation;
 - c) If the costs to be incurred by the public partner and/or end users correspond to the benefit to be received from the public service as a result of the Project implementation or the established/improved public infrastructure;
 - d) The ratio of the Project with the price is acceptable.

3. The public and private cooperation Project will be positively assessed as a result of the profitability analysis if the research finds that:
 - a) The Project is commercially feasible;
 - b) There is a possibility to attract the private partners and private financing;
 - c) Distribution of risks between the parties is likely to be acceptable for potential private partners.

Article 13. Access to Finances

By assessing the availability of finances specified in the Feasibility Study, the accessibility of budget funds for the authorized entity to implement the Project, in case of co-financing, shall be determined.

Article 14. Feasibility of Public and Private Cooperation

1. If the result of the Feasibility Study, carried out in accordance with the Law, these Rules or Georgian Government Decree N191 (April 22, 2016) "On Approval of Investment Project Management Guidance" confirm the feasibility of the implementation of the Project, the authorized entity shall evaluate and decide, which procurement method is a priority for the Project implementation, including the need to assess the feasibility of public-private cooperation in the case, if the Project has a public and private cooperation criteria. The above assessment, along with the result of Feasibility Study, shall be based on the preliminary assessment of the Project implementation through public and private cooperation, as defined in Sub-clause 2(c) of Article 7, of this Rule.

2. If the Project meets the criteria of public and private co-operation, the authorized entity shall establish and substantiate the advantages between the procurement methods of the Project implementation, in particular, determine how optimal the Project implementation will be through the public and private co-operation (concessional or not concessional), compared to the state procurement.

3. In the event that, in accordance with the provisions of Clause 2 of this Article, it is better to carry out the Project through the public and private co-operation, the authorized entity shall establish and substantiate the priority between concessional and non-concessional public and private co-operation for a specific project.

4. The approval provided for in this Article is based on the results of the analysis carried out in accordance with the methodology of the price-quality ratio.

Article 15. Conclusion of Project Preparation Results

1. In the process of Feasibility Study, the authorized entity may submit to the Agency the above study for preliminary assessment and recommendations in the implementation process.

2. After the completion of Feasibility Study, other supplementary surveys (if any) and the documentation related to the Project shall be submitted to the Ministry of Finance of Georgia by the authorized entity for review and evaluation. A copy of the above documentation shall also be submitted to the Agency.
3. The conclusion of the Ministry of Finance of Georgia on the Feasibility Study and other supporting studies (if any) and documents related to the Project are necessary before the submitting of the documentation and relevant research related to public and private cooperation projects to the Government of Georgia for final approval. A copy of the conclusion of the Ministry of Finance of Georgia shall also be submitted to the Agency.
4. The Ministry of Finance of Georgia shall submit the conclusion of Feasibility Study and financial and economic elements of the proposed Project, particularly on direct and indirect fiscal commitments. Fiscal obligations include all fiscal risks and conditional obligations, including the guarantees, which might have a negative impact on the financial position of a public partner and/or financially dependent body and which is a result of the factors like project related to the financing and issuance of guarantees. Guarantees set forth in this Clause may be directly indicated in the Project and/or derive from the concept of the Project and/or Feasibility Study.
5. Upon request, the conclusion of the Ministry of Finance of Georgia can be based on an independent assessment of Feasibility Study.
6. The Ministry of Finance of Georgia shall issue a conclusion on whether the implementation of the Project in the form of public and private cooperation is appropriate, based on its economic and social value and general condition, taking into account the state funding or guarantees.
7. The Ministry of Finance of Georgia shall prepare conclusion, provided by this Article, within 45 calendar days from the date of submission by the authorized entity of the documents provided for in this Article.

Article 16. Project Acceptance and Approval

1. After the completion of the procedure envisaged by Article 15 of this Rule, the authorized entity shall present the following to the Government of Georgia:
 - a) The documents related to the project and relevant researches;
 - b) The conclusion of the Ministry of Finance of Georgia on the results of preparation of public and private cooperation.
2. Based on the submitted documentation, Georgian Government shall make a decision on approval, refusal or re-processing (including, taking into account the issues identified as a result from the conclusion the Ministry of Finance of Georgia) of the Project.

Article 17. Principles and Limitations of the Selection Process

1. The concessionaire shall be assigned in accordance with the Law and procedures established by this Rule, whereas the contractor shall be assigned in accordance with the Law of Georgia on Public

Procurement.

2. In case of institutional public and private cooperation, the selection procedures provided for in this Rule also apply to the selection of private partner for the Company of institutional public and private cooperation, including the period of non-concessional public and private cooperation, if the latter cannot be implemented according to the Law on Public Procurement.

3. With the exception of the restrictions provided by Law, participation of a person, who has been included by the State Procurement Agency in the register of dishonest persons, participated in the procurement or who has not fulfilled his obligations under the public and private cooperation Project during the past five years is prohibited at the stage of the process of selection. In addition, participation of the entity in the selection process, the director/partner/ultimate beneficiary/supervisory board member of which may have a conflict of interest with the head of authorized entity is forbidden. A conflict of interest occurs, when there is a relationship between individuals included in Article 19 of the Tax Code of Georgia, taking into account the peculiarities of the Law and this Rule.

4. The selection process includes the stages provided for in Article 19 of the Law.

5. An enterprise created by the state and/or municipality equity participation, in which the state and/or municipality directly or indirectly owns 30% or less of shares, can participate in the selection process as a private partner.

6. Equity participation of an enterprise(s) created by equity participatory state and/or municipality in a private partner of a public and private cooperative company, cumulatively should not exceed 30% of the shares, and such participation should correspond to the investment strategy of the enterprise created by the state's equity participation (if any) and risk profile and its capital and mortgage returns are comparable to those of investors and borrowers for similar projects or instruments.

7. An enterprise (the enterprises) created by the state and/or municipality equity participation that is (are) taking part in the public and private cooperation company shall be considered as a private partner (the private partners) and have no prior access to any type of information compared to other participants of selection process.

8. With the consent and/or decision of Georgian Government, the authorized entity may terminate the selection process at any time before the conclusion of the Contract, about what the participants that are at the appropriate stage of the selection process shall be informed and it shall be published in the same way as the selection process.

Article 18. Selection Commission

1. To exercise the authorities established by the Law and this Rule, the authorized entity shall create a selection commission before the commencement of the selection process of the concessionaire (except for small projects). The authority of this commission will be terminated after choosing the winner of the selection process or after announcing the decision to terminate the selection process. The persons referred to in Clause 5 of Article 18 of the Law are appointed as the members of the selection committee.

2. Each member of the selection commission have one vote. The selection commission takes the decision with the majority of all members with the voting rights. If the votes are divided equally, the voice of the chairman is decisive. A member of the selection commission, who does not agree with the commission decision is entitled to submit his/her opinion in writing, which will be attached to the decision of the selection commission.
3. In order to nominate the members of the selection commission from other administrative bodies, the authorized entity shall submit a request to the relevant administrative body, at least eight calendar days prior to the commencement of the selection process.
4. Members of the selection commission by their signatures confirm the absence of conflicts of interest at each stage of the selection process.
5. The protocol about meetings of the selection commission is drawn up, which is signed by the members present at the meeting.
6. At any stage of the selection process, if necessary, the selection commission may provide for the involvement of relevant independent consultants.
7. Functions of the selection commission are:
 - a) Cooperation in the process of drawing up the selection process documentation with the authorized entity and determining the criterion of selection of the most eligible candidate;
 - b) Approval of the application on intention to conduct the selection process of the concessioner, in accordance with this Rule;
 - c) Determination of the qualification criteria and qualification assessment of the participants in the selection process, according to this Rule;
 - d) In accordance with this Rule, the evaluation of proposals submitted during the selection and determining the winner of the selection process as a result of the evaluation;
 - e) Fulfillment of all other activities necessary for conducting the selection process of the concessioner, in accordance with the procedure prescribed by law and by this Rule.

Article 19. Announcement of the Selection Process and Qualification Stage

1. In order to announce the selection process, the selection commission shall approve the application on the intent of the concessioner's selection process and the authorized entity shall ensure its publication.
2. The application on the intent of the concessioner's selection process shall include at least the following information:
 - a) The name, address, telephone number, e-mail of the authorized entity;
 - b) About the concession:
 - b.a) the contract type and the subject of the concession;
 - b.b) the scope and place of carrying out the concession;
 - b.c) the concession term;
 - b.d) the estimated cost of the concession;
 - c) About the selection process:
 - c.a) the type of announcement of the selection process (public/closed);

- c.b) the time period for receiving applications;
- c.c) the address to be used for the presentation of documents;
- g.d) the language/languages on which the documents should be submitted;
- c.a) the time and place of public opening of the applications;
- d) The grounds for disqualification of the candidates include the following:
 - d.a) refusal to submit own proposal;
 - d.b) the proposal submitted by him/her does not meet the requirements of the selection documentation;
 - d.c) he/she does not specify before the deadline, incompletely specify and/or substantially change the documentation after the specification;
 - d.d) he/she refuses or otherwise rejects the conclusion of the Contract;
 - d.e) he/she commits a dishonest act in order to obtain the right to conclude the Contract;
- e) Business opportunities, financial, technical, professional and legal compliance criteria and information/documentation required for the candidate to prove that he/she meets the mentioned criteria;
- f) Unless otherwise determined by the decision of Georgian Government, the rights of the authorized entity are:
 - f.a) to refuse the selection process at any time, with the consent and/or decision of Georgian Government;
 - f.b) not to sign the Contract as a result of this process, or continue to select the candidates, or send the request to the candidates to submit their proposals;
 - f.c) do not reimburse to any participant or other person any type of expenditure in relation to the selection process, occurred before or after the announcement of the selection process;
 - f.d) do not reimburse to the winner of selection process or any other person any type of expenditure, occurred before or after signing the Contract with the winner of selection process.

3. Taking into account the specificity of the Project, the application on the intent of the concessioner's selection process may include other additional information. The application on closed selection process is not subject to publication in accordance with this Article.

4. The application on the intention of the concessioner's selection process shall be published at least 30 calendar days prior to the commencement of the term of the submission of qualification documentation by the participants of the selection process.

5. The application under this Article shall be published on the official websites of the authorized entity, the Agency and the Public Procurement Agency, as well as through the electronic system after the creation of corresponding electronic system. Authorized entity is authorized to publish the application, using other alternative methods/sources.

6. The selection commission may determine that the application on the intention of the selection process, together with the State Language of Georgia, shall be published in one of the languages, widely used in periodical or special editions of international trade and are widely published at international level.

7. The authorized entity is entitled to make changes in the documentation of selection process, excepted the conditions, stipulated in Law. In these cases, the terms of the selection process should last for a

period of time that has passed from the day of announcement of the selection process till making the appropriate changes, except when the changes are technical or intended to clarify or correct technical problems.

8. The authorized entity, with a help of selection commission, shall ensure the identification of those participants in the selection process, who meet the qualification requirements set by the selection commission.

9. Qualification requirements for public and private cooperation Project shall be determined by the selection commission in the documentation required for the publication of the selection process, involving the Agency. The qualification requirements must include at least the following data:

- a) Professional and technical qualifications and human resources necessary for the implementation of the Project, including in the part of the design, construction, operation and maintenance;
- b) The ability to manage financial aspects of public and private cooperation Project and to meet the Project financing requirements;
- c) The managerial and organizational capabilities required to implement the Project, including the experience of implementation of similar projects.

10. If necessary, the authorized entity shall ensure determining the priority of qualification requirements.

11. The qualification requirements shall be preliminarily declared for the person potentially participating in all selection processes, shall be linked to the subject of the Contract and shall not be permitted to interpret them by a private partner. Besides, the criteria of qualification assessment should be determined to contribute to the competition and provide the opportunity to verify the information, submitted by the participants in the selection process.

12. The selection commission shall ensure the qualification assessment of the participants in the selection process, evaluate each participant of the selection process and make a decision on qualification or disqualification of the participant. When making such a decision the selection commission shall be guided merely by the qualification criteria, defined in the qualification documentation.

13. Submission of the documents confirming qualification data by the participant in the selection process is possible in Georgian and foreign languages, in accordance with the decision of the selection commission. If the documentation is submitted in a foreign language, its translation in Georgian should be attached, which shall be fulfilled in accordance with the legislation of Georgia. When solving the controversial issues, related to the qualification documentation, between the document in a foreign language and the translation into the State Language of Georgia, priority shall be given to the original.

Article 20. Documentation of the Concessioner's Selection Process

1. Prior to approval of the selection process documentation by the selection commission, the authorized entity shall send the documentation to the Ministry of Finance of Georgia for appropriate recommendations.

2. The selection commission is authorized to establish a reasonable fee for the submission of the

selection process documentation to the participant.

3. The authorized entity shall provide for the transfer of documentation of the selection process to the interested person (except the cases when the documents are publicly available in electronic form) after requirement, whereas when the fee is established in accordance with Clause 2 of this Article, within two working days after the payment of the fee..

4. The documentation of the concessioner's selection procedure may include:

- a) The instructions for submitting proposals for participation in the selection process;
- b) The rules and criteria for the evaluation of proposals and priority of the above criteria;
- c) The documentation related to the Project;
- d) The form of providing for the proposal to be submitted;
- e) In case of initiative offer, the amount and payment schedule of incurred expenses to be made by the selection process winner participant to the private initiator;
- f) Any other document requested by the selection commission.

Article 21. Invitations to Submit the Proposals, Submission of the Proposals

1. The competitive commission provides approval and sending/uploading in electronic system (after its creation) of the invitation documents for submission of the proposal to those candidates, who have successfully passed a qualifying stage. Invited candidates can submit a proposal/ application with a view to inviting the proposal considering the requirements defined by the invitation. The winner or the short list candidate shall be identified as a result of evaluation of the submitted proposals/applications.

2. The term of submission of the proposal shall allow the participant of the selection process to inspect the appropriate documentation and prepare the proposal.

3. At the stage of submission of the proposal, the selection commission is allowed to organize the group meetings as well as the individual meetings with the participants of selection process, which should be indicated in the invitation documentation to submit the proposal.

4. The invitation documents for submission of the proposal, in agreement with the Agency, shall be approved by the selection commission at the stage of the Project preparation, considering the reviewed and approved documents and shall contain at least the following information:

- a) General information required for submission of the proposal, including description of the specific characteristics of the Project, information related to the Project assets/property, as well as the instructions for submission of proposals by the participants of the selection process and the information about the terms for the project implementation;
- b) The Project specification and performance indicators, indicating minimum quantitative and qualitative requirements and results necessary at the level of any or all of the services;
- c) Draft contract.

5. The content of the proposal/application to be submitted by the participant shall be approved by the selection commission and is part of the documentation of invitation to submit the proposal.

6. The proposal/application submitted by the participant shall include the following information and documents:

- a) A guarantee to provide for the selection process proposal;
- b) Taking into consideration the specificity of the Project, the relevant technical proposal/application containing all or part of the list below:
 - b.a) Technical solution to provide for the public service, defined by the invitation on submitting the proposal;
 - b.b) Description of the proposed works;
 - b.c) The proposed operating solution;
 - b.d) Displaying the necessary capacities in quantitative and qualitative expression, in order to ensure the service and requested results;
 - b.e) Relevant issues related to the environmental standards;
- c) Taking into consideration the Project specifics, relevant financial proposal/application containing all or part of the following:
 - c.a) The cost of construction and design activities, annual operation costs and maintenance costs, capital and operation and maintenance costs;
 - c.b) Offered financial solution to provide for the relevant services;
 - c.c) Estimated revenue to be received as a result of service delivery;
 - c.d) The tariff/cost of service/price/fee during the term of public and private cooperation Contract;
 - c.e) The amount of financial support if such a thing is expected by the public authority;
 - c.f) The rate or profit distribution plan, within which the private partner makes payments to the public partner for the right to carry out the public and private cooperation projects;
 - c.g) General terms and conditions of the Agreement, on which the public authority shall accept or pay the cost of the product in whole or in part;
 - c.h) Unified financial indicators/outcome of the Project, forecasted cash flows during the term of the contract on public and private cooperation;
- d) Considering the specifics of the Project, the relevant legal/commercial proposal/application containing all or part of the following:
 - d.a) Organizational-legal form of the selection participant entity;
 - d.b) Organizational-legal form of the private partner;
 - d.c) Legal structure of the whole concession Project, which may include different agreements between different parties;
 - d.d) Compliance of the Project with the applicable legislation;
 - d.e) Comments on the draft project, if it is allowed in accordance with the documentation on invitation of submitting the proposal.

Article 22. Guarantee to Secure the Proposal

1. Documentation on inviting of submitting proposals in the selection process should take into account the type, quantity, form, term and basic conditions of the guarantee to secure the proposals to be submitted by the participants in the selection process at the proposal submission stage.
2. Implementation of the guarantee to fulfill the proposal by the authorized entity is allowed if the selection process participant:
 - a) Withdraws or replaces the proposal after the expiration of the deadline, determined for submission of proposals;
 - b) Declines to negotiate with the authorized authority;
 - c) Refuses, upon request of an authorized body, to sign the contract after his proposal is approved by the established rule;

- d) Rejects to provide a guarantee of fulfillment of the Contract, after its proposal is approved by the established procedure or fails to comply with any other provision, before the Contract is concluded, which was determined with the invitation of submitting the proposal;
- e) Fails to meet any other conditions, which was stipulated as a basis for withdrawing the guarantee to secure the proposal in the invitation document to submit the proposals for the participant and/or document to identify the winner..

Article 23. Evaluation of the Proposal

1. The selection commission determines the criteria and rules for evaluating the proposal, based on the specifics of the Project. The timing of the Project of public and private cooperation, the amount of private funding to be implemented, as well as the quality of the workload or planned service can be considered as the criteria (combination of criteria) for evaluating the proposal.
2. The assessment of technical proposal shall include the following data assessment (taking into account the Project specification, upon request):
 - a) Technical strength (sustainability);
 - b) Compliance with the environmental standards;
 - c) Operational expediency;
 - d) The quality of service and its compliance with the Project requirements/specifications/outcomes and measures for their continuation;
 - e) Interconnection of technical proposals with the financial and legal proposals.
3. The financial proposal assessment shall include the following data assessment (taking into account the Project specification upon request):
 - a) The remuneration (tariff/service cost/price/fee) provided during the validity of the Contract;
 - b) The amounts to be paid by the authorized entity and/or public partner (if any);
 - c) The design and construction costs, annual operation and maintenance/ownership costs, capital expenditure and costs of operation and maintenance;
 - d) The scope of expected financial support from the state (if any);
 - e) The payment related to the distribution of profits, within which a private partner ensures the payment of certain fees to the state in return for granting the right to implement the Project;
 - f) The time planning, sequence and availability;
 - g) Correlation of financial proposal with technical and legal proposals.
4. The evaluation of legal proposal shall include the following data assessment (taking into account the Project specification upon request):
 - a) Organizational-legal form/legal status of participants in the selection process;
 - b) Planned organizational-legal form of private partner;
 - c) Compliance of the infrastructure/services received from the Project with the acting legislation;
 - d) The comments expressed in connection with the draft contract (if allowed by the documentation of invitation to submit to the proposal);
 - e) Correlation of legal proposal with technical and financial proposals.
5. After the completion of the assessment process, according to this article, the selection commission shall present to the authorized entity a detailed assessment report in respect of each component, envisaged by this Clause and the reasoning of their decision.

Article 24. Negotiation and Announcement of the Winner

1. In no less than five days, the authorized entity shall invite the participants of selection process, shortlisted candidate or the winner selection process participant to negotiate the terms of the contract.
2. Negotiations shall not apply to those matters (if any), which are not subject to negotiation, according to the documentation on inviting of submitting the proposals, as well as the main/key aspects stipulated in the documentation of invitation to submit to the proposal.
3. The assessment report prepared by the selection commission and the final, agreed (negotiated) conditions of the Contract shall be submitted by the authorized entity to the Ministry of Finance for a review for the purposes of the Law.
4. The Ministry of Finance of Georgia shall submit its conclusion to the authorized body of the project, after which the authorized body shall ensure to provide the terms of this Contract to the Government of Georgia, together with the conclusion of the Ministry of Finance.
5. The Government of Georgia shall make a decision to approve and sign the terms of the Contract, or return the issue to the authorized entity for making additional amendments to the draft Contract, including the issues/comments of the Ministry of Finance of Georgia.
6. If the authorized entity considers that concluding the Contract is not possible as a result of negotiations with the participant of the selection process/shortlisted candidate of the selection process, the authorized entity shall interrupt negotiations with the participant. The authorized entity shall invite the participant with the best result and negotiate with him before the agreement is reached or refuse all other applications. The authorized entity shall not resume negotiations with the participant, with whom the negotiation process has been terminated in accordance with this Article. The authorized entity is entitled to conduct the negotiations with the shortlisted participants of the selection process in a parallel mode. In such case, the authorized entity shall notify in writing the shortlisted participants of the selection process.
7. The authorized entity shall ensure to provide for sending the notification on choosing the winner among the participants to the winner participant/uploading this notification in the electronic system (after the creation thereof) and placing it on its own official website and the Agency's official website. This notification shall include the private partner's name and main conditions of the Contract.
8. The Agency shall ensure the preservation of information about the selection process and the announcement of the winner of each contract.
9. In case of direct negotiations, public information placed on the website of the authorized entity and the Agency, shall at least contain the draft contract, as well as final Feasibility Study, independent research/evaluation (if any) and summary of main financial indicators, except the secret information, protected by the Georgian legislation.

Article 25. Rule of Closed Selection

1. The closed selection process is conducted without the stage of announcement of the selection

process. In such a case, the persons identified for the selection process will be provided with the appropriate information by sending a notification in writing.

2. Before the beginning of closed selection process, the authorized entity shall provide for the following:
 - a) Submitting the relevant information to the Government of Georgia after coordination with the Agency and the rationale of the reasonability of publication of selection process in a closed way, in order to obtain the consent for the implementation of a closed selection process;
 - b) Participation of minimum three candidates in the selection process.

Article 26. Initiative Offer

1. A private initiator has the right to prepare and submit an initiative offer to the relevant sectoral ministry the offer of concession in energy sector. The private initiator shall submit the copy of the initiative offer to the Agency.

2. The initiative proposal should be so formulated in order to allow a pre-assessment of the proposed Project and its potential, as well as its evaluation of its implementation in the form of a public and private cooperation Project.

3. After the initiative offer and its prior assessment, the relevant sectoral ministry shall study the proposed offer by involving the Agency and determine if the Project meets the following criteria:

- a) Compliance with the state or community needs, on the basis of analysis of needs;
- b) If it provides or the added value and/or innovation if compared with the state-initiated projects.

4. The sectoral ministry is authorized to require from the private initiator submitting of the additional information and documentation necessary for the sectoral ministry to fully evaluate the initiator's qualifications and the feasibility of the proposed Project, as well as to evaluate the possibility of the Project's successfully implementation in the form acceptable to the public partner.

5. If the proposed initiative proposal meets the requirements set forth in this Article and the Project is acceptable to the sectoral ministry, the sectoral ministry shall provide for the activities stipulated in this Rules to initiate the Project.

6. If the concept of the Project is approved by the Government of Georgia, the authorized entity has the right to request (during the direct negotiations or in other cases) from the initiator preparation of the Feasibility Study at his own expense, and if necessary, other surveys as well. The conducted surveys shall be presented to the sectoral ministry, which provides for the submission of the project to the Government of Georgia, in accordance with the procedures, stipulated with the preparatory stage. The assessment shall also include the sectoral ministry's conclusion on the feasibility of the Project. According to Article 16 of this Rule, the decision of Georgian Government shall be made within 120 days after the submission of the initiative.

7. A private initiator is authorized to review or exchange with the ministry of relevant sector the information on the specifics of the potential Project, before submitting the initiative offer and modify the Project accordingly.

8. In order to fully evaluate the proposed Project and the information related to it, the sectoral ministry is authorized (involving the Agency) to hire the consultants for conducting the Feasibility Study of the Project or study the evaluation presented by the private initiator and ensure assistance during the selection process.

9. The private initiator, upon requested, shall submit the draft contract on basic terms of the concession. The private initiator will also provide a detailed estimate of project-related past or future expenditures in relation of the project, before making the final proposal (except for the internal engineering, legal and financial expenses).

10. Denial of the initiative offer shall be made in writing.

11. The initiative offer can be denied if:

- a) It is related to the Project within which the selection process has already been initiated and/or declared;
- b) It does not satisfy the criteria set out in this Article;
- c) The Project will not adequately satisfy the assessment of feasibility and financial analysis;
- d) The Project is not financially accessible or is associated with the large risks, in the context of relevant participation of public partner, due to its financial or guarantee obligations or other commitments to be made by it; or if the proposed draft contract on proposed main condition is not properly balanced; and also if the Ministry of Finance has issued negative conclusion on the Project and the Project was not approved by the Government of Georgia.

12. If the Feasibility Study is approved and the sectoral ministry decides to implement the initiated Project, it will ensure the start of the selection process, following the selection steps or by direct negotiations, based on the consent of the Georgian Government, only in the energy sector, as defined by the Law.

13. Selection process shall be conducted through direct negotiations, following the procedure of closed selection and the requirement about the selection of three candidates shall not apply on it. The process will be conducted transparently, to the extent possible, and the same result will be achieved maximally as with competitive selection.

14. If the selection process is announced as a result of initiative offer, submitted by the private initiator, during the stage of publication of selection process it should indicated that the selection process is conducted based on the initiative offer.

15. The private initiator may be given preference, which must be defined in the documentation of the selection process. According to this documentation, if a participant in the selection process was selected as a result of the selection process, and it is not a private initiator or affiliate, the winner participant shall reimburse the private initiator reasonable substantiated and properly documented direct expenditures that it incurred in connection with the preparation and submission of the initiative offer. The amount of these expenditures shall be publicly available at the selection stage. It shall not exceed the amount of the proposal provision guarantee that shall be submitted by the participants.

Article 27. Small Projects

1. Identification and initiation of small projects shall be conducted by the authorized entity. The authorized entity shall submit the concept of the project to the Agency and the Ministry of Finance of Georgia.
2. As a result of assessment of potential fiscal risk, the Ministry of Finance or the Agency are entitled to claim the implementation of Feasibility study from the authorized entity, based on which the authorized entity, in consultation with the Agency shall conduct a simplified feasibility study, the form and rule of which may be defined by the Agency by the methodological and practical guidelines.
3. On the basis of appropriate assessment, the Ministry of Finance of Georgia shall submit to the Agency and authorized entity the conclusion about the small project assessment results and measures to be taken to minimize the fiscal risks. The authorized entity shall take into account the submitted offers.
4. If a small project contains fiscal risks, a draft contract of a small project to be implemented will be submitted to the Georgian Government for consideration. In this case, the conclusion of the Ministry of Finance of Georgia will have a recommendation character.
5. A draft contract of a small project to be implemented in the energy sector shall be submitted to the Government of Georgia for consideration by the authorized entity.
6. The contractor of the small project shall be chosen in compliance with the Law of Georgia on Public Procurement, whereas the concessioner shall be appointed in compliance with Clauses 1-4 of Article 18 of the Law, without the obligation to establish the selection commission.
7. The authorized entity shall carry out the selection procedure in relation to small projects in simplified way, in compliance with the basic principles of public and private co-operation (including through a closed selection process).

Article 28. Amendments

1. Draft amendment to the Contract, including in connection with the Project of public and private cooperation, as well as the draft amendment to the memorandum/contract, signed before the implementation of this Decree, in connection with a small project, should be transferred by the private partner to the Ministry of Finance of Georgia and/or the Government of Georgia, in the cases provided for by the Law and Clause 2 of this Article. If the draft amendment to the Contract does not provide any condition, stipulated in Sub-clause “b” of Clause 2 of this Article, the Ministry of Finance of Georgia shall notify the public partner about it. Afterwards, the contracting parties have the right to sign the amendment to the Contract (except for the case specified in Sub-clauses “a” and “c” of Clause 2).
2. The Government of Georgia shall be submitted the draft amendment to the Contract for consideration in the following cases if:
 - a) The amendment concerns the basic terms of the contract, including the provisions set out in Clauses 1 and 2 of Article 21 of the Law;

- b) The Ministry of Finance of Georgia determines the fiscal risks or fundamental changes and the amendment to be implemented to the contract, affects the initial cost of the project by more than 20% and/or if the cost of the proposed change exceeds the limits specified for the small projects;
- c) The Government of Georgia is a contracting party.

3. The consent of the Government of Georgia to the proposed amendments should be based on the updated part of Feasibility Study (if this amendments affect the Feasibility Study components), which reflects the proposed changes based on the same components as the original research was implemented; and it should be based on the reasons for the emergence of economic benefits or changes, on its socio-economic and environmental assessment, the impact of a project change on financial and financial sustainability, if the change in the Contract is related to the above aspects.

4. In order to process the draft amendment of the Contract, the Ministry of Finance of Georgia is authorized to submit to the authorized entity the proposals on making or not making changes to the Contract under existing conditions or to take into account other conditions. The authorized entity is obliged to submit along with the proposal of the Ministry of Finance, the draft amendment of the Contract to the Government of Georgia, which decides whether or not to amend the contract or require additional changes in the agreed conditions in order to reflect relevant issues in the draft, including the proposals, offered by the Ministry of Finance of Georgia

Article 29. Institutional Public and Private Cooperation

1. The selection of a private partner in the institutional public and private cooperation company, established or to be established in the framework of an institutional public and private cooperation is carried out in accordance with the procedures, established for the selection of a concessioner or contractor.

2. The provisions of the law relating to a concessioner or contractor shall apply to the institutional public and private co-operative company, when it is a concessioner or contractor.

3. In the case of institutional public and private cooperation, in qualifying and other requirements, in connection with obtaining the right by a private partner, there should be taken into a maximum limit of the share of the public partner that the public partner can own, provided that the participation of the public partner does not exceed 50%. An exception is the case, when the above-mentioned is one of the criteria for the selection process and/or one of the main conditions of the agreement between the partners of a public and private partnership company. The contract and the agreement between the partners is substantive and integral part of the project documentation.

4. The partnership agreement shall include the description of the rights and obligations of each party in execution of the Contract, the managerial functions and responsibilities of the private partner in the public and private cooperation company.

Article 30. Contract

1. Within the framework of the Project, including the projects of institutional public and private

cooperation, the contract shall be drawn up. The initial draft Contract shall be part of the announced invitation aboutsubmitting the proposals based on the Law. The draft Contract covers the conditions set out in Article 21 of the Law, as well as the issues related to the specification of the Project. The contract may take into account other issues agreed by the parties.

2. The type of support and remuneration, specified in Article 28 of the Law may be specified in the Contract.

3. In accordance with Sub-clause “d” of first Clause of Article 28 of the Law, the guarantees for long-term purchases of certain goods and services may be provided to the energy sector at the price, specified under the agreement.

4. The Contract shall take into account the possibility of imposing a penalty on a private partner, in case of a violation of the obligation. The minimum amount of this penalty shall be not less than 0.01% of the full cost of the Project for each overdue day. The penalty/one-time or multiple sanctions, which have already been imposed or will be imposed for the violation of such an obligation, which is not related to the overdue the term fulfillment of the obligation, is determined by the documentation of the invitation for submitting proposal and the Contract.

5. Maximum amount of the guarantee of fulfillment of a contract is 10% of the Project cost.

6. Georgian Government can forgive the accrued penalty of a private partner on the basis of the justified petition on forgiveness of accrued penalty, which confirms that the reasons of delay are related to independent, objective circumstances, submitted by the public partner and private partner or company of public and private cooperation. Justified petition shall confirm, that overdue was caused by the independent, objective circumstances. The Government of Georgia is authorized to create a commission to resolve this issue.

7. In the case of non-concessional public and private cooperation, imposing the penalties/fine stipulated in the contract and the possible compensation shall be determined on the basis of the results of performance. The penalty should identify a significant difference in the income for the private partner, in accordance with the performance capacity and quality.

8. The contract term shall be determined by the authorized entity, in accordance with the requested service and/or works to be performed. The maximum term of concession must not exceed a reasonable period of time during which it's expected that the concessionaire will be able to fully return the investments made from the work performed and/or the services rendered (so as to take into account the amount of investments required to achieve the goals defined by the Contract). In order to calculate the amount of the investment, the investment includes the total investment that will be made during the term of the concession Contract.

9. The Contract shall, together with the principles provided for by Law, be based on the following approaches:

- a) Target indicators/plans for performance: The Contract on public and private cooperation shall define the resulting indicators and contributions;
- b) Single or multiple sanctions, imposed or to be imposed, and remuneration: Single or multiple

sanctions, imposed/to be imposed, and remuneration shall be related to the fulfillment of the target indicators of the contract;

c) Insurance: insurance should be provided with public and private cooperation in accordance with the availability of insurance practices, excited in the market and insurance risks;

d) Force Majeure: The Contract on public and private cooperation shall include the mode in which the party is released from the obligation and after a certain period of time became authorized to terminate the Contract, if there is an unforeseen circumstance that is not under the control of the party and which makes it objectively impossible for the party to fulfill the obligation;

e) Early termination: Compensation and/or one-time or multiple sanction imposed/to be imposed for early termination of the Contract may be imposed on a public partner only in the case specified directly in the Contract, the amount and/or calculation formula of which shall be directly stipulated the public and private cooperation Contract.

Article 31. Upper Margin of Public and Private Funding

1. The upper limit of state liabilities within the framework of public and private co-operation shall be determined by the legislation regulating the state finances, the preparation of proposals about which will be ensured by the Ministry of Finance of Georgia for the purpose of determination and reflection of legislation regulating the state finances till December 31, 2018.

2. The violation of the upper limit established by the Project on public and private cooperation shall not be permitted.

Article 32. Monitoring

1. Upon the request, the public partner, together with the Agency, may create a project monitoring group or a special structural unit, in order to monitor public and private cooperation, or bind the existing structural unit, to conduct the above function. The activity of the above-mentioned group/structural unit includes proper control over the implementation of the concluded contracts during the term of this Contract.

2. The annual report signed by public partner and prepared by the monitoring group/structural unit on implementation of the project shall be submitted to the Agency. Its form and the form of requirement of the relevant information may be considered in the methodical-practical guidelines.

3. The report referred to in Clause 2 of this Article shall be publicly available on the official website of the public partner.

Article 33. Further Assessment of the Project

1. The report of the further implementation assessment of project, which is prepared in the terms stipulated in Article 33 of the Law, shall be submitted to the Agency and the Ministry of Finance of Georgia by the public partner.

2. The Agency and the Ministry of Finance shall provide the analysis of the submitted report and develop relevant recommendations, in particular:

a) The Ministry of Finance of Georgia shall submit the joint assessments of the public partners to the

Agency together with the recommendations on how to improve the implementation process and evaluation of public and private co-operation in the future;

b) Based on the recommendations received from the Ministry of Finance of Georgia and the assessment carried out by the authorized entity the agency prepares and submits to the Government of Georgia a joint assessment along with recommendations on how to improve the implementation process and evaluation of public and private co-operation in the future.

Article 34. Access to Information

The information about the Project as well as its elaboration and implementation is public, except for the documents classified as secret information by the Georgian legislation and if they do not contain the data related to the state security or the private partner's intellectual property.