

Georgian Government

Decree N515

October 31, 2018

Tbilisi

On Approval of Rules and Conditions for Submission to the Ministry of Economy and Sustainable Development of Georgia of Proposals about the Feasibility Study of Construction and/or Construction, Ownership and Operation of those Power Plants, which are not the Projects of Public and Private Partnership and Consideration of these Proposals

Article 1

On the basis of Article 5 (Sub-clauses "h", "e" and "j") of Georgian Law "On Structure, Authority and Rules of Activity of Georgian Government", the attached Decree "On Approval of Rules and Conditions for Submission to the Ministry of Economy and Sustainable Development of Georgia of Proposals about the Feasibility Study of Construction and/or Construction, Ownership and Operation of those Power Plants, which are not the Projects of Public and Private Partnership and Consideration of these Proposals" shall be adopted.

Article 2

The Ministry of Economy and Sustainable Development of Georgia shall provide the implementation of actions necessary to implement the Decree.

Article 3

1. This Decree shall apply to the projects in the field of energy, which according to the Law of Georgia "On Public and Private Partnership" are not the projects of public and private partnership.
2. Based on: the Decree #107 of Georgian Government (dated April 18, 2008) on the State Program "Renewable Energy 2008 - about the Approval of the Rule to ensure Construction of Renewable Energy Sources in Georgia"; Georgian Government Decree #214 (dated August 21, 2013) "On Approval of the Rule of Expressing Interest in Feasibility Study of the Construction, Construction, Ownership and Operation of Power Plants in Georgia" and the Decree #40 (dated April 10, 2014) of Minister of Energy of Georgia "On Approval of Rules and Conditions for Submission to the Ministry of Energy of Georgia of Proposals about the Feasibility Study of Construction and/or Construction, Ownership and Operation of those Power Plants, which are not Included in the List of Potential Power Plants to be Built in Georgia" and consideration of these proposals", the projects initiated prior to the enforcement of this Decree, based on the Memorandums, conducted with the Government of Georgia, shall be implemented in accordance with the rules, provided for by the same acts and/or memorandums, unless these are the projects of public and private partnership, in accordance with the Law of Georgia "On Public and Private Partnership".

Article 4

The Decree shall come into force upon promulgation.

Prime Minister

Mamuka Bakhtadze

Rules and Conditions for Submission to the Ministry of Economy and Sustainable Development of Georgia of Proposals about the Feasibility Study of Construction and/or Construction, Ownership and Operation of those Power Plants, which are not the Projects of Public and Private Partnership and Consideration of these Proposals

Article 1. General Provisions

1. The purpose of these Rules and Conditions (hereinafter referred to as the Rule) is to determine the rules and conditions for submission to the Ministry of Economy and Sustainable Development of Georgia (hereinafter referred to as the Ministry) and consider the proposals about the feasibility study of construction and/or construction, ownership and operation of the power plants.
2. Based on the proposal of the Ministry on the implementation of the project, the Georgian Government (hereinafter - the Government) shall make the decision and approve the relevant terms.
3. The purpose of this Rule is to grant the right to carry out the project to the person, who will perform duly and honestly the terms of the Government's decision to implement the project.
4. The project shall be implemented by the Government decision, whereas the Ministry shall prepare the issue.
5. The Ministry is authorized to request the applicant submission of bank guarantee provided for in Article 6 of this Rule, before preparing the issue on the implementation of the Project.

Article 2. Definition of Terms

For the purposes of this Rule, the terms used in it have the following meanings:

- a) **The Project** - the project on feasibility study of the construction and/or construction, possession and operation of the power plants in the energy sector, which under the Law of Georgia “On Public and Private Partnership”, does not represent the project on public and private partnership;
- b) **The Government** – Government of Georgia;
- c) **The Ministry** - Ministry of Economy and Sustainable Development of Georgia;
- d) **The Power Plant** - hydro, solar, wind and other power plant;
- e) **The Project Implementer Person** - any natural or legal person or legal entity who, under this Rule, has signed the Agreement /memorandum with the Government;
- f) **The Agreement /Memorandum** – the Agreement /memorandum, signed between the Project Implementer Person and the Government on implementation of the Project, which includes the feasibility study of Construction and/or construction of the Power Plant;
- g) **The Bank Guarantee** – pre-construction guarantee or construction guarantee.

Article 3. Arrangement of Project Implementation

1. An interested person submits to the Ministry the application (in writing), which shall contain the following information:
 - a) The name of the Ministry;
 - b) The information about the applicant (the name and ID number, legal/actual address and telephone

number);

- c) The request (including preliminary refusal of the public and private partnership project implementation);
- d) The request for confidentiality of the submitted documents (in case of such request);
- e) The date of application submission and the signature of the applicant;
- f) The list of documents attached to the application.

2. An interested person shall attach to the application a preliminary study before the feasibility study (hereinafter - the Preliminary Study), which should contain the following data:

- a) Location and basic parameters of the facility;
- b) Topographical map of the potential construction site of the facility (scale - 1: 25000);
- c) Short geological data on the location of the facility and geological map (based on the foundation material);
- d) Seismic data of the facility site and seismic map;
- e) Hydrological and metrological data (average monthly indicators): wind observations data in case of wind power plant and solar observations in case of solar power plant;
- f) Energy model (on expected generation);
- g) Initial data on environmental impacts;
- h) The scheme of possibility of connecting to the network and the possibility of network to obtain the generated electricity;
- i) Possible network connection scheme and the network capacity to accept the generated electricity;
- j) Information about the infrastructure (existing roads and the roads under construction shall be indicated on the topography map, including the approximate distances);
- k) Estimated costs;
- l) Economic report (economic analysis of the project, which envisages the volume of investment, duration and credit rate).

2¹. If the application of the interested person relates to the placement of solar power plants on the buildings, owned by the enterprises founded through shared participation of administrative bodies or the state, the requirements set out in Sub-clauses "c" and "d" of Clause 2 of Article 3 of this Rule do not apply to this interested person. Decisions on these issues shall be negotiated with the building owner.
(*Georgian Government Decree N146, dated on March 25, 2019 - website 27.03.2019*)

3. The information should be submitted in Georgian in writing as well as in an electronic form.

4. The Ministry is authorized to request from the interested person any other information, which he deems appropriate.

Article 4. Discussion of Proposals and Decision Making

1. The Ministry shall verify the compliance of the application and attached documentation with the requirements of Article 3 of this Rule.

2. If the application or enclosed documents do not contain the information indicated in paragraph 2 of Article 3 of this Rule and/or have been submitted through violating the provisions of paragraph 3 of Article 3, the Ministry shall determine the reasonable duration for the interested person for submitting the complete documentation. If the Project Implementer Person fails to submit the relevant documentation in determined duration, the Ministry shall leave the submitted application without consideration.

3. The proposals submitted by the interested person(s) in accordance with the provisions of Article 3 shall be reviewed by the Ministry, no later than one month after receiving the application. If necessary, the term may be extended as long as the total time limit for reviewing the application does not exceed three months.
4. The Ministry, upon the Project Implementer Person's request, shall protect the confidentiality of the proposals (relevant documents) submitted under this Rule.
5. The Ministry is entitled to apply to relevant state or private organization for assessment of individual parameters of the submitted proposal and carry out appropriate actions.
- 5¹. If there are two or more alternative proposals on the same river and location, the Ministry determines the deadlines by sending a written notice to the interested parties about the provision of guarantees before the start of construction, as provided for in Article 6 (2) of this Rule. Priority shall be given to the interested party, who provides the bank guarantee with the highest total amount. Bank guarantees shall be returned to other interested parties.
(Georgian Government Decree N146, dated on March 25, 2019 - website 27.03.2019)
6. The Ministry shall submit to the Government the proposal that meets the requirements of current legislation and this Rule, together with the supporting documentation for the decision-making purposes.
7. In case of approval by the Government of the submitted proposal(s), the agreement /memorandum shall be signed between the Government and the interested person, after issuing relevant legal act.
8. In accordance with this Rule, there is a possibility of signing few Agreements /Memorandums on conducting a feasibility study of the construction of wind and/or solar power plants in the same territory and/or part of the territory, about that all the parties to the Agreement/Memorandum shall be notified in writing.
9. The Ministry carries out the monitoring of fulfillment of the Agreement /Memorandum.
10. The obligations, under the Agreement /Memorandum, concluded based on this Rule, shall be deemed to be performed on the basis of an audit report, prepared in accordance with applicable legislation, which verifies complete fulfillment these obligations.

Article 5. Procedure for Signing Agreements

1. The Government shall conclude the Agreement /Memorandum within three months from the date of issuing the relevant Act of government.
2. The Agreement /Memorandum may consist of pre-construction phase and/or construction phase.
3. The right to implement the Project shall be transferred to the Project Implementer Person from the moment of signing the Agreement /Memorandum, unless otherwise is provided by the same Agreement/Memorandum.
4. After the conclusion of the Agreement /Memorandum, in order to implement the Project and upon request of the Project Implementer Person, in case of necessity the Government, within its competence, shall ensure (following the rule established by law) the transfer to the Project Implementer Person of relevant rights (which are necessary for the Project) on the land plot(s) that is(are) on the Project site,

provided that the Project Implementer Person fully meets the requirements of Georgian legislation and the terms and conditions set forth in this Agreement /Memorandum.

5. With the purpose of implementing the Project, upon request from the Project implementer person and in case of necessity, the Government shall, within its competence, provide support in obtaining the license(s)/permit(s) necessary for the implementation of the Project, provided that the Project Implementer Person is in compliance with the applicable law and satisfies the relevant license/permit conditions.

Article 6. Bank Guarantees to be submitted in Connection with the Agreement /Memorandum

1. Within the period stipulated in the Agreement /Memorandum, which should not be more than 30 (thirty) calendar days from the date of conclusion of the Agreement/Memorandum, the Project Implementer Person is obligated to submit to the Ministry the pre-construction or construction guarantee issued in favor of the Government by the bank, licensed in any OECD (Organization for Economic Cooperation and Development) member country and/or licensed in Georgia. This is to ensure the fulfillment of obligations, in accordance with the Agreements/Memorandums, following the established rules and/or until the conclusion of the Agreement /Memorandum in the case specified Article 1, Paragraph 5 of this Rule. The amount of the Bank Guarantee shall not exceed 15% of share capital of the guarantor bank. At the same time, the duration of the Bank Guarantee shall be minimum 5 (five) months longer than the period of fulfillment of the obligations undertaken by the Agreement /Memorandum. The amount specified in the Bank Guarantee shall be reduced only by a decision of the Government.

2. For the purposes of Clause 1 of this Article, the preconstruction guarantee is a bank guarantee, according to the total installed capacity of the power plant, which is not less than 5,000 (five thousand) USD or equivalent in Euros (in accordance with the rate set by the National Bank of Georgia at the time) per each MW, whereas a construction guarantee is a bank guarantee by total installed capacity of a power plant or a cascade of power plants. In the case of power plant or cascade power plants the guarantee shall be 100 000 (hundred thousand) USD per each MW or equivalent in the Euros (according to the course established by the National Bank of Georgia at the time).

(Georgian Government Decree N502, dated on October 24, 2019 - website 28.10.2019)

3. In the case of violation of the terms and conditions under paragraph 1 of this Article, the Agreement / Memorandum shall be terminated, and the Ministry shall inform the Project Implementer Person.

4. Violation of terms and conditions undertaken through the Agreement /Memorandum (except for the obligation included in paragraph 3 of this Article), will impose the Project implementer person, who failed to fulfill the obligation, the penalty in amount of 1.5% (per each day of delay) of total quantity implied in the preconstruction and/or construction bank guarantee. In addition, the Project Implementer Person shall pay the imposed penalty within 15 (fifteen) calendar days upon receipt of the request from the Ministry. If the payment has not been made within the mentioned period - the Ministry (on behalf of the Government) is entitled to withdraw the unpaid amount of imposed penalty from the Bank Guarantee. In the event of reduction of the amount of Bank Guarantee, the Project Implementer Person is obliged to fill in the Bank Guarantee within 30 calendar days.

5. If the sum of the penalty imposed on the Project Implementer person under paragraph 4 of this Article constitutes 50% of total amount provided by the Bank Guarantee, the Government is entitled to terminate the Agreement /Memorandum unilaterally. In this case, the Government shall require to withdraw the total amount provided by the Bank Guarantee.

6. If the penalty imposed on the Project Implementer Person under paragraph 4 of this Article has been withdrawn from the Bank guarantee and the Bank Guarantee has not been filled with the withdrawn money within 30 calendar days, the Government is entitled to terminate the Agreement /Memorandum unilaterally. Under the circumstances, the Government shall withdraw the remaining amount provided by the Bank Guarantee.

7. To ensure the fulfillment of the obligations undertaken by the Agreement /Memorandum on feasibility study of the construction of wind and/or solar power plants, by the Government decision, the Project Implementer Person shall be exempt from the obligation to present the preconstruction guarantee.

Article 7. Responsibility of the Project Implementer Person

1. The Project Implementer Person is obliged to comply with the obligations undertaken by the Agreement /Memorandum, to meet the requirements of the applicable legislation and to submit the information regarding their fulfilment to the Ministry upon request.

2. The Project Implementer Person has no right to fully or partially transfer the right on implementing the Project to another party or attach any form of obligation to it. In addition, the Person is responsible for the maintenance and protection of the Power Plants built under this Project.

3. In the event of Government's consent to alienate the right on implementing the Project during the validity period of the Agreement /Memorandum, the Project Implementer Person shall undertake the transferring of Project implementation right to a new owner, under the same conditions, as provided in the Agreement /Memorandum signed with the Government.

4. In the case of partial alienation of the Project by the Project Implementer Person during the implementation period of the Agreement /Memorandum, a new owner, together with the Project Implementer Person shall be jointly (solidary) responsible for the fulfillment of the obligations undertaken by the Agreement /Memorandum.

5. After the submission of the document (audit report) confirming fulfillment of the obligations under the Agreement /Memorandum and after the evaluation made by the Ministry, the information shall be presented to the Government.

6. In case of non-compliance with the obligations taken under the Agreement /Memorandum, the Project Implementer Person shall receive a written warning, which indicates the period for correcting the violation and the amount of the penalty. The penalty is determined by the Agreement /Memorandum, in accordance with this Rule and contractual obligations.

7. Repeated non-compliance with the Agreement /Memorandum provisions and/or failure to pay the penalty within the appointed time, shall be considered by the Government as the basis for unilateral termination of the Agreement /Memorandum. Under the circumstances, the Project and the relevant property (including the intellectual property associated with the Project) shall be transferred free of charge to the state, as its property. Paid amounts and incurred expenses shall not be reimbursed to the Project Implementer Person.

Article 8. Replacement /Cancellation of the Condition and/or Forgiveness of Unpaid Penalty Imposed/to be imposed under the Agreement /Memorandum

1. Based on the replacement/cancellation of the condition stipulated in the agreement /memorandum, the

Project implementer person is entitled to send to the Ministry the justified request about forgiveness of unpaid penalty imposed/to be imposed under the agreement /memorandum. The Ministry shall submit this request to the Government for decision-making purposes.

2. In the case provided for in paragraph 1 of this Article and based on the appeal of the Ministry, by the Government decision, instead of modifying/canceling/forgiving a penalty, the Project Implementer Person shall be required to pay appropriate compensation and/or meet another obligation determined by the Government.