

GEORGIAN GOVERNMENT

DECREE № 214

August 21, 2013

Tbilisi City

ABOUT THE APPROVAL OF THE RULE OF EXPRESSING INTEREST IN
TECHNICAL AND ECONOMICAL STUDY OF THE CONSTRUCTION,
OWNERSHIP AND OPERATION
OF THE POWER PLANTS IN GEORGIA

Article 1

Based on the Law of Georgia about “The Rule of Structure, Authority and Performance of Georgian Government” (Article 5, Sub-clauses “h” and “i”), the attached “Rule of Expressing Interest in Technical and Economical Study of the Construction, Construction, Ownership and Operation of the Power Plants’ in Georgia” shall be approved.

(Georgian Government Decree #563, dated on December 25, 2017 - website 26.12.2017)

Article 2

According to and/or based on the Georgian Government Decree #107 “The State Program “Renewable Energy 2008” - about the Approval of the Rule to Insure the Construction of New Sources of Renewable Energy in Georgia”, the issues connected with the memorandums of understanding, signed with Georgian Government shall be regulated in compliance with the same Decree.

Article 3

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The Ministry of Energy shall provide for carrying out the actions necessary to activate the Decree herein.

Article 4

The Decree herein shall become active upon promulgation.

Prime Minister

Bidzina Ivanishvili

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Article 1. General Provisions and Sphere of Activity

1. The rule herein establishes the regulations and conditions of the Ministry of Energy (hereinafter referred to as *the Ministry*) conducting research of expressed interest to conduct the technical and economical study of the construction of power plants in Georgia; their construction, ownership and operation; also, the application submitted by the interested parties; finding the winner and signing the memorandum of understanding (hereinafter referred to as *the Memorandum*) on technical and economical study of the construction, construction, ownership and operation of the power plants.
2. *The Ministry*, with the help of individual administrative and legal act, approves and places on its official web page the list of potential power plants (hereinafter referred to as *the List*) and the main information about them available at *the Ministry*. *The List* is subject to the revision, which is conducted by *the Ministry*.
3. *The Ministry*, with the help of individual administrative and legal act, announces expression of interest (hereinafter referred to as *the Expressed Interest*) to conduct the technical and economical study of the construction, construction, ownership and operation of every individual power plant, included in *the List*. *The Ministry* makes the decision on the application of *Expressed Interest*, which can also be based on the person addressing *the Ministry*.
4. *Expressed Interest* is placed on *the Ministry's* official web-page (www.minenergy.gov.ge), which should contain the conditions of *Expressed Interest*.
5. Legal person or the consortiums of legal persons are eligible to take part in *the Expressed Interest*.
6. As a result of *Expressed Interest*, *the Memorandum* of understanding is signed between the Government of Georgia and the person (hereinafter referred to as *the Winner Person*), who is the winner of *Expressed Interest*. There is a possibility of

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other persons joining *the Memorandum*.

(*Georgian Government Decree #563, dated on December 25, 2017 - website 26.12.2017*)

7. Removed (*Georgian Government Decree #563, dated on December 25, 2017 - website 26.12.2017*)
8. Operation of this Rule applies to those Hydro Power Plats, which are not included in *the List*. The person, who intends to conduct the technical and economical study and/or build the hydro power plant on specific place, is obliged to send the prior written notification to *the Ministry*. Technical and economical study of construction and construction of such power plants is conducted in concordance with the rule established by active legislation and agreed with *the Ministry*.

8¹. The individual-administrative act of the Ministry sets Terms and Rules for the submission of the proposals and its review for construction technical and economic feasibility study, construction, ownership and operation of the power plants, which are not in the list.

(*Georgian Government Decree #132, dated on February 07 2014 - website 12.02.2014*)

9. Georgian Government is authorized to sign *the Memorandum* of understanding about conducting the technical and economical study of constructing, owning and operating the power plant, which is not included in *the List*.

Article 2. Expression Interest

1. Individual administrative-legal act about the *Expression Interest*, issued by *the Ministry* shall contain the following:
 - a) The title, possible location, approximate plan and possible main technical parameters of the power plant;
 - b) The deadline for starting the construction and putting into operation the Power Plant, based on the technical and economical study of the construction and construction permit;
 - c) Approximate quantity of the investment for constructing the hydro power plant;

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- d) The qualification requirements and criteria for selecting the best application;
(*Georgian Government Decree #563, dated on December 25, 2017 - website 26.12.2017*)
 - e) The location (address) and contact number of the place, where this application was received;
 - f) The draft of *the Memorandum* to be signed with the person, who won the tender on expressing the interest;
2. As a result of Expression of Interest, the interested person shall submit to the ministry his application as well as the information/documentation provided by the terms of the Expression of Interest and preconstruction guarantee, established by Article 3 of this Rule.
(*Georgian Government Decree #563, dated on December 25, 2017 - website 26.12.2017*)
 3. After the expiration of deadline for *Expressed Interest*, *the Ministry* sends the written notification to the persons, who meet the qualification requirements and their applications comply with the Rule herein and the conditions established by expressing the interest.
 4. Presented applications (as a result of expressed interest), which meet the qualification requirements, comply with the Rule herein and the conditions established by expressing the interest shall be submitted to the Georgian Government (to find the winner) if the individual, who delivers the application, presents the preconstruction guarantee (according to the Article 3). In addition, the applications presented violating the terms, remain unconsidered. *The Ministry* sends the written notification to respective persons about it.

Article 3. Preconstruction Guarantee

The person is obliged to submit desired amount of *Preconstruction Guarantee* in favor of Government of Georgia, to *the Ministry* with application defined by Article 2 clause 2 of this Rule, according to the total installed capacity of the power plant, at least 15 000 (fifteen thousand) USD or its equivalent in Euros (according to the currency, established for that time by Georgian National Bank) per each megawatt (hereinafter referred to as *Preconstruction Guarantee*) to provide submission of *Construction Guarantee* according to the submitted application in the expression of interest, technical-economic study of the construction of the power plant, preparation of an Environmental Impact Assessment

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report and the terms of the memorandum. In addition, the *Preconstruction Guarantee* shall be issued by the bank, licensed by the Organization of Economic Cooperation and Development (OECD) and/or licensed in Georgia. The quantity of *Preconstruction Guarantee* shall not exceed 15% of share capital of the bank.

(Georgian Government Decree #563, dated on December 25, 2017 - website 26.12.2017)

Article 4. Preconstruction Guarantee

1. Within the duration considered by *the Memorandum* and following its conditions, the person is obliged to present (for benefit of Georgian Government) the bank guarantee (hereinafter referred to as *the Construction Guarantee*) to *the Ministry*, by the deadline and fulfilling the terms, to provide for starting the construction of the power plant (based on the construction permit) and bringing it into operation. The quantity of this bank guarantee shall comply to the total installed capacity of the power plants' cascade, including 100 megawatt capacity power plant or power plants' cascade and shall amount to 100 000 (hundred thousand) USD or its equivalent in Euros (according to the currency, established for that period by the National Bank of Georgia) per each megawatt and 50 000 (fifty thousand) USD or its equivalent in Euros (according to the currency established for that period by the National Bank of Georgia) per each megawatt in case of the power plants or power plants' cascade with the capacity more than 100 megawatts. In addition, the construction guarantee shall be issued by the bank which is licensed in any country of Organization of Economic Cooperation and Development (OECD) and/or Tbilisi. The quantity of construction guarantee shall not exceed 15% of share capital of the bank.

2. Violation of the construction works commencement date and conditions determined by *the Memorandum*, based on the construction permit will result in imposing the penalty to the violator person in amount of 1,5% of the total amount of construction guarantee per each overdue day. Besides, the imposed penalty shall be paid by the person within 15 calendar days, after receiving the request from *the Ministry*. If the payment is not done within the duration mentioned above, the amount shall be paid based on the request from the government to pay the nonpaid penalty amount from the construction guarantee. In addition, in case of payment of the penalty by the person, the construction guarantee shall be reduced by the amount of paid penalty.

(Georgian Government Decree #2, dated on 15.01.2015)

3. In the event that total of the penalties imposed to the person based on the Paragraph 2

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of the Article herein, makes 50% of total amount considered by *the* construction guarantee, the government is obliged to terminate the validity of *the Memorandum* unilaterally. Under the circumstances, the government will request the total amount considered by the construction guarantee.

4. Violation of the power plant operation commencement date and terms will result in imposing the penalty to the violator person. The penalty constitutes 1,5% of the total amount of construction guarantee per each overdue day. Besides, the imposed penalty shall be paid by the person within 15 calendar days after receiving the request from *the Ministry*. If the payment is not done within the duration mentioned above, the amount shall be paid based on the request from the government to pay the nonpaid penalty amount from the construction guarantee. In addition, in case of payment of the penalty by the person, the construction guarantee shall be reduced by the amount of paid penalty.

(Georgian Government Decree #2, dated on 15.01.2015)

5. In the event that total of the penalties imposed to the person based on the Paragraph 4 of the Article herein, makes 50% of total amount considered by *the* construction guarantee the government is obliged to terminate the validity of the memorandum unilaterally. Under the circumstances, the government will request the total amount considered by the construction guarantee.

Article 5. Qualification Requirements and Criteria for Finding the Winner

1. The following qualification requirements are established of the participants of *Expressed Interest*:
 - a) The application presented to take part in expressing the interest shall contain the agreement of the person to conduct the technical and economical study, to build, own and operate the power plant(s) following the allowed parameters and conditions;
 - b) The application shall be accompanied by the information/documentation provided by the conditions of Expression of Interest, including *Preconstruction Guarantee* determined by Article 3 of this Rule, which shall satisfy the conditions provided by the expression of interest;

(Georgian Government Decree #563, dated on December 25, 2017 - website 26.12.2017)

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- c) The criteria for finding the winner, suggested by the application shall not be less than the amount defined by Article 3 of this Rule and *Preconstruction Guarantee* presented by the person participating in expression of interest shall meet the conditions set out in the expression of interest;

(Georgian Government Decree #563, dated on December 25, 2017 - website 26.12.2017)

- c¹) Removed *(Georgian Government Decree #563, dated on December 25, 2017 - website 26.12.2017)*

- d) Other requirements established by the *Expressed Interest*.

2. In the event that two or more applications are submitted to the government as a result of Expression of Interest in particular power plant, in accordance with the Paragraph 4 of Article 2, Georgian Government shall recognize the victory of participant, who will offer the largest *Preconstruction Guarantee* in accordance with Article 3 of this Rule.

(Georgian Government Decree #563, dated on December 25, 2017 - website 26.12.2017)

3. In the case of submitting two or more applications with equally offered *Preconstruction Guarantee* in accordance with Article 3 of this Rule, the *Ministry* shall specify an additional time limit by sending a written notice to the persons presenting this application in accordance with the relevant terms of expression of the interests, in order to present improved proposals in the evaluation criteria determined by paragraph 2 of this Article.

(Georgian Government Decree #563, dated on December 25, 2017 - website 26.12.2017)

4. From the improved proposals presented within the deadline, the government finds the winner ,based on the evaluation criteria, established by the Clause 2 of the Article herein.

Article 6. Finding the Winner and Signing the Memorandum

1. The government finds the winner of *Expressed Interest*, commensurate to the Article 5 of the Rule herein, excluding the circumstances, considered by the Clause 2 of the Article herein.

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3. If only one application is submitted to the government, as a result of the *Expressed Interests* regarding specific power plant (commensurate to the Clause 4 of Article 2), the government is authorized to make the decision on acknowledging the person, who brought the application as the winner. *The Ministry* presents the draft *Memorandum* to be signed with the winner of *Expressed Interest* to the Government of Georgia. The latter is signed in the event that it is approved by the government.
4. *The Ministry* returns preconstruction guarantees to all other persons except the winner of *Expressed Interest*.
5. If signing of *the Memorandum* with the winner person fails, the government is authorized to sign *the Memorandum* with one of the remaining participants, who were next to offer the best application, commensurate to the Clause 2 of Article 5.
6. *The Ministry* shall monitor the fulfillment of *the Memorandum*.

Article 7. General Provisions of the Memorandum

1. *The Memorandum* of understanding consists of preconstruction phase and construction phase.
2. Besides the issues considered by *the Memorandum* of understanding in the preconstruction phase, the person winner of expressed interest is obliged to do the following:
 - a) Complete the feasibility (technical and economical) analysis of the project;
 - b) Prepare the report on project environment impact evaluation.

2¹. Removed

(*Georgian Government Decree #563, dated on December 25, 2017 - website 26.12.2017*)

3¹. The winner of the expression of interest is obliged to ensure the preparation of the audit report (at his own expense), no later than three months after putting into operation the hpp, provided by the appropriate Memorandum of Understanding/agreement signed with the government. For the purposes of this Decree, the audit report (hereinafter – “Audit Report”) means the principal document, issued by the auditor/audit firm, included in the list, approved by Georgian Government Decree №360 (dated September 5, 2012) on

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"the Approval of the List of Persons, who are Conducting the Audit of Financial Statements of the Enterprises or Issuing the Expert and Audit Reports and Approval of the List of State Enterprises", that confirms the amount of reasonable investment expenditures (hereinafter - the "Reasonable Expenditures"), spent on construction and exploitation of the power plant by the winner of Expression of Interest, according to the legislation.

(Georgian Government Decree #430, dated on September 07, 2016)

3. Besides the issues considered *by the Memorandum* of understanding in the construction phase, the person winner of *Expressed Interest* is obliged to do the following:

- a) Obtain the rights on the plot of land enclosed in the project area;
- b) Obtain the construction permit necessary to fulfill the project.
- c) Begin the construction of the power plant and conduct the construction activities in compliance with the Legislation of Georgia, accurately following the norms of construction, environment protection and safety; complete the construction and put in production already built unit as established by the rule.

3¹. Removed

(Georgian Government Decree #563, dated on December 25, 2017 - website 26.12.2017)

3². Removed

(Georgian Government Decree #563, dated on December 25, 2017 - website 26.12.2017)

3. Removed

(Georgian Government Decree #563, dated on December 25, 2017 - website 26.12.2017)

4. Removed

(Georgian Government Decree #563, dated on December 25, 2017 - website 26.12.2017)

5. Removed

(Georgian Government Decree #563, dated on December 25, 2017 - website 26.12.2017)