

**The Government of Georgia
Decree N 426**

**August 17, 2018
Tbilisi**

**On Approval of the Rules of Developing and Implementing
Public-Private Partnership Projects**

Article 1

In compliance with Article 37, Sub-paragraph 1(b) of the Law of Georgia on Public-Private Partnership, the Rules of Developing and Implementing Public-Private Partnership Projects shall be approved.

Article 2

This Decree shall come into force immediately upon its publication.

Prime Minister Mamuka Bakhtadze

The Rules of Developing and Implementing Public-Private Partnership Projects

Article 1. General Provisions

The Rules of Developing and Implementing Public-Private Partnership Projects (hereinafter – the Rules) are elaborated in compliance with the Law of Georgia on Public-Private Partnership (hereinafter – the Law), in order to define PPP project development and implementation rules.

Article 2. Definition of Terms

1. For the purpose of these Rules, the terms used herein shall have the following meanings:
 - a) Facility of Special Importance – the list of critically important facilities defined in compliance with the Decree of the Georgian Government based on the Law of Georgia on Public-Private Partnership;
 - b) The Manual on Methodology and Practice – a methodological and practical manual developed for the implementation of PPP projects in Georgia, which may be approved based on an order of the Minister of Finance of Georgia and elaborated and periodically revised in cooperation with the Public-Private Partnership Agency;
 - c) The Project – a public-private partnership project (PPP project);

- d) The Project Concept Note – description of a project which is prepared at the project identification stage, before making a decision on conducting an in-depth feasibility study, and which includes (but is not limited to) the information provided for in Article 7 of these Rules;
 - e) Project Costs – all costs necessary for complete implementation of a public-private partnership (PPP) project, total financial resources needed for achieving planned results, including the initial investment costs that become necessary during the project implementation process;
 - f) The Agency – Public-Private Partnership Agency (PPP Agency);
 - g) The best standards and international experience – the best standards set in the periodically revised Legislative Guide for Privately Financed Infrastructure Projects developed by the United Nations Commission on International Trade Law (UNCITRAL), EU Directive 2014/23/EU on the Award of Concession Contracts, publications of international financial institutions and the United Nations on public-private partnership, and analyzed international experience;
 - h) Feasibility Study – technical and economic study prepared at the PPP project preparation stage in compliance with Article 13, Paragraph 6 of the Law and these Rules;
 - i) Price-Quality Correlation Method – the methodology which implies the use of the public sector’s comparison instrument in order to compare the options of implementing a project by means of public-private partnership and public procurement, so as to ensure achievement of the same results for the society and optimal risk distribution and to prove that the PPP project will produce net economic benefit for achieving defined goals, will be optimal from the point of accessibility and sustainability, and will ensure the best price-quality correlation. This assessment methodology, including its evaluation methods, process, rules of using the public sector’s comparison instrument, and calculation specifications may be specified in more detail in the Manual on Methodology and Practice;
 - j) The Contract – an agreement on public-private partnership (PPP Contract).
2. The terms used herein which are defined in the Law, shall have the same meanings as provided for in the Law.

Article 3. The Sphere of the Public-Private Partnership Regulation

1. A PPP can be implemented in any sector of public infrastructure and public services, except for mineral resources, oil and gas sectors and related exploration & development and/or scientific research.
2. The relations arising from construction and/or other types of work and/or services which are carried out in the sectors specified in Paragraph 1 of this Article but which, according to the Georgian legislation, are not considered to be the main activities of those sectors, shall be regulated by the PPP legislation.
3. The energy sector projects that envisage signing Contracts on guaranteed purchase of electricity shall be deemed concessions in compliance with Article 2, Subparagraph (j) of the Law.

4. Privatization of the state/municipal property by the state/municipality or handover of such property to a private partner for use, management and/or project implementation, or assistance provided by the state/municipality to the private partner in receiving a license or permit required under the active legislation, shall not be considered as public-private partnership.
5. The minimum term of PPP Contracts shall be 5 years.

Article 4. Project Stages

In compliance with the process provided for in the Law and these Rules, a PPP project shall consist of the following stages:

- a) Project identification and initiation;
- b) Project preparation;
- c) Selection of a private partner;
- d) Project implementation;
- e) Post-implementation assessment.

Article 5. Manual of PPP Methodology and Practice

In agreement with the Agency, the Minister of Finance may publish a manual on PPP methodology and practice for the purpose of providing methodology and guidance to the authorized body for each implementation stage of the project provided for in Article 4 of these Rules, in compliance with the best standards and international experience.

Article 6. Project Identification

1. Potential projects are identified by an authorized body or the Agency, as needed.
2. Potential projects are identified taking into account the State Development Plan/Strategy/Action Plan and/or Municipal Development Plan/Strategy/Action Plan, and/or directions provided for in the Development Plans/Strategies /Action Plans of Ajara /Abkhazia Autonomous Republics and/or needs identified/revealed by the authorized body in the corresponding sector and/or in the priority sector defined by the Government of Georgia in compliance with public interests.
3. A potential project can be identified by initiating a proposal.
4. In the energy sector, inclusion of a facility into the List of Potential Power Plant Construction Projects in Georgia and/or publication of the above List in the official webpage of the line ministry shall not be deemed as identification of a potential project.

Article 7. The Project Concept Note and Prefeasibility Study

1. At the project identification stage, the authorized body shall prepare a concept note of a potential project identified in compliance with Article 6 of these Rules.
2. The minimum information that shall be included into the Project Concept Note from the prefeasibility study is as follows:

- a) Preliminary assessment of the project implementation need - in this assessment it is necessary to prove that the project is in compliance with the public interests, priority PPP sectors defined by government and/or the State Development Plan/Strategy/Action Plan and/or Municipal Development Plan/Strategy/Action Plan, and/or directions provided for in the Development Plans/Strategies/Action Plans of Ajara/Abkhazia Autonomous Republics and/or needs identified/revealed by the authorized body in the corresponding sector, and that the goal of project is to meet public interests by creating public infrastructure and/or improving existing infrastructure and/or provision of public services;
 - b) Preliminary assessment of the project costs - as a minimum, this assessment shall contain information about the project scope/volume, parameters, and funds necessary for the project implementation (including: construction, annual maintenance and/or operation). During preliminary evaluation of the project it is also necessary to define the project's ability to generate income;
 - c) Preliminary assessment of the option of implementing a project through public-private partnership - in this assessment it is necessary to define the PPP type (concessional/non concessional), specify the functions of the public and private parties, and assess project benefits. Besides, at this stage it is also necessary to estimate the project related risks and identify the studies that need to be carried out;
 - d) Assessment of the access to finance and fiscal risks - in this assessment it is necessary to define the PPP project's potential impact on the partner's/authorized body's budget during all project stages. If possible, in order to create acceptable conditions for the project implementation, it is also necessary to assess fiscal risks related to the project implementation.
3. The Project Concept Note can be prepared using the templates developed in the Manual on Methodology and Practice.

Article 8. Project Initiation

1. The provisions of this Article shall be extended to all projects with the exception of small ones, unless otherwise provided for in these Rules.
2. The authorized body shall submit the Project Concept Note to the Agency and the Ministry of Finance of Georgia for review.
3. Within one month after submission of the Project Concept Note by the authorized body, the Agency shall prepare recommendations while the Ministry of Finance of Georgia shall prepare a conclusion regarding the Project Concept Note. The Ministry of Finance of Georgia and the Agency shall have the right to request from the authorized body to make amendments and resubmit the Project Concept Note, including in case if the Concept Note does not satisfy requirements of these Rules.
4. The Project Concept Note, together with the conclusion of the Ministry of Finance of Georgia, shall be submitted by the authorized body to the Government of Georgia for consideration.

5. Based on the documents submitted in compliance with this Article, the Government of Georgia shall make a decision on accepting, declining or revising the project concept in compliance with the criteria provided for in Paragraph 13.4 of the Law.
6. The Government of Georgia shall have the right to demand implementation of a deeper analysis with regard to the project concept and/or ask the authorized body to revise the project concept taking into account the Agency's recommendations and/or conclusion of the Ministry of Finance.
7. A Contract signed in violation of the procedures provided for in this Article shall be deemed void and shall not lead to any legal consequences.

Article 9. Decisions on Preparing a Project

1. If the Project Concept is accepted by the Government of Georgia, the authorized body shall carry out preparatory work and, if needed, ensure participation of the Agency and the Ministry of Finance of Georgia in the process, within their fields of competence.
2. At the project implementation stage, in compliance with these Rules, the authorized body shall prepare financial, technical, and economic studies/analysis in order to assess (among other things) the following:
 - a) The project costs and expected social and economic results;
 - b) The authorized body's access to finance for the project implementation, in case of the State's financial co-participation in the project;
 - c) Social and environmental impact assessment and negative impact mitigation measures provided for in the Georgian legislation.
3. The goal of the feasibility study is to confirm and develop each aspect of the prefeasibility study based on which verified assessment of the availability of financial resources, fiscal risk assessment and price-quality correlation are prepared.
4. In case of the energy sector projects of more than 100 MW installed capacity, feasibility studies shall be prepared by an independent party.

Article 10. Cost Efficiency Analysis and Assessment of the Project's Socio-Economic Impact

The feasibility study of a project shall include qualitative assessment of the project's socio-economic impact, as well as cost efficiency analysis which would verify and as much as possible measure the project's quantitative and monetary impact (the project's public expenditures and benefits, based on evaluation of alternative costs) on the society and its socio-economic results, including the impact on employment, and confirm:

- a) Expected positive qualitative socio-economic benefit of the project;
- b) The project's positive net benefit (benefit minus corresponding expenses), including quantitative assessment of its positive socio-economic effects;
- c) Affordability of the proposed tariff/service fee/price for the public, in case if the private partner is paid by the final consumer.

Article 11. Environmental Impact Assessment

If a project is subject to the environmental impact assessment, the feasibility study shall include an environmental impact assessment report prepared in compliance with the Environmental Impact Assessment Code, with attached Environmental Solution provided for in the same Code.

Article 12. Viability and Sustainability of the Project

1. The feasibility study shall include the project's financial model which must reflect and take into account all aspects of the feasibility study. The Manual on Methodology and Practice may define the list of other issues that must be included into the feasibility study.
2. The project's viability will be positively assessed if the analysis shows that:
 - a) The project implementation is technically feasible;
 - b) A technical study demonstrated that the project is ready for implementation;
 - c) Expenses carried by the public partner and/or final consumer are appropriate to the benefit received from the public services or new/improved infrastructure created by the project;
 - d) The project's cost-benefit correlation is acceptable.
3. The profitability of a PPP project will be assessed positively, if the research shows that:
 - a) The project implementation is feasible from the economic point of view;
 - b) It is possible to attract financial resources of a private partner and private financing;
 - c) Distribution of risks between the parties is presumably acceptable for a potential private partner.

Article 13. Access to the Finance

Being a part of the feasibility study, the assessment of the access to finance must demonstrate availability of the budget funds to the authorized body for the project implementation purposes, in case of cofinancing.

Article 14. Expediency of Public-Private Partnership

1. If as a result of a feasibility study carried out in compliance with the Law and these Rules or if in accordance with Decree N 191 (dated April 22, 2016) of the Government of Georgia on Approval of Investment Project Management Guidelines the project implementation is considered expedient, the authorized body shall make assessments and decide which procurement method would be the most preferable one for implementing this particular project; this includes assessment of the expediency of public-private partnership, if the project satisfies the PPP criteria. The results of such assessment, together with the results of the feasibility study, must serve as the grounds for preliminary assessment of the possibility to use the public-private partnership format for the implementation of a project provided for in Article 7, Subparagraph 2(c).
2. If the project satisfies PPP criteria, the authorized body shall identify the procurement method and demonstrate the advantages of the selected one; in particular, the authorized body shall ascertain that implementation of the project through public-private partnership (concessional or not) is the most optimal, compared to the public procurement option.

3. If the justification made in compliance with Paragraph 2 of this Article shows preferability of the public-private partnership, the authorized body shall identify and prove the advantages of using public-private partnership in case of this particular project.
4. The justification provided for in this Article shall be based on the results of the analysis carried out with the use of the Price-Quality Correlation Method.

Article 15. Conclusion on the Project Preparation Results

1. The above research done by the authorized body during the feasibility study can be submitted to the Agency for preliminary assessment and recommendations.
2. At the end of this process, the authorized body shall submit the feasibility study, together with other auxiliary studies (if any) and project related documents, to the Ministry of Finance of Georgia for review and assessment. Copies of these documents shall also be submitted to the Agency.
3. Before the project related documents and research results are submitted to the Government of Georgia for final approval, the Ministry of Finance of Georgia shall write its conclusion regarding the feasibility study, other auxiliary studies (if any) and project related documents. A copy of the opinion of the Conclusion issued by the Ministry of Finance of Georgia shall also be submitted to the Agency.
4. The Ministry of Finance shall provide a conclusion on the feasibility study as well as financial and economic elements of the project, especially direct and indirect fiscal obligations. The fiscal obligations include all those fiscal risks and conditional obligations, including guarantees, which may have a negative impact on the financial condition of the public partner and/or an entity financially dependent on the public partner and which is a consequence of such factors as the project related financing and giving guarantees. The guarantees mentioned in this paragraph may be directly specified in the project and/or implied from the project's nature and/or feasibility study.
5. If needed, the conclusion of the Ministry of Finance of Georgia can be based on an independent assessment of the feasibility study.
6. The Ministry of Finance of Georgia must issue a conclusion on the viability of implementing the project by means of PPP judging from its economic and social value and total sustainability and taking into account public financing or guarantees.
7. The conclusion provided for in this Article shall be prepared by the Ministry of Finance of Georgia within 45 calendar days after the documents specified in this Article are submitted to it by the authorized body.

Article 16. Acceptance and Approval of the Project

1. Upon completion of the procedure provided for in Article 15 of these Rules, the authorized body shall submit to the Government of Georgia:
 - a) Project related documents and corresponding researches;

- b) Conclusion of the Ministry of Finance of Georgia on the PPP preparation results.
2. Based on the submitted documents, the Government of Georgia shall make a decision on accepting, declining or revising the project (inter alia, taking into account the issues identified in the conclusion of the Ministry of Finance of Georgia).

Article 17. The Principles and Limitations of the Selection Process

1. A concessioner shall be selected in compliance with the procedure provided for in the Law and these Rules, while a contractor is selected in compliance with the Law of Georgia on Public Procurement.
2. In case of institutional public-private partnership, the selection procedures provided for in these Rules are also extended to selection of a private partner, including for non-concessional public and private partnership, if this cannot be implemented in compliance with the Law of Georgia on Public Procurement.
3. Besides the limitations provided for in the Law, the persons included by the Agency into the register of dishonest persons or the persons who during the past 5 years failed to fulfil their obligations in a PPP project are prohibited to participate in the selection process. Besides, those entities the director, partner, final beneficiary, or supervisory board member of which may have a conflict of interests with a manager of the authorized body, shall be prohibited to participate in the selection process. The conflict of interest exists if the relations between persons are those provided for in Article 19 of the Tax Code of Georgia, taking into account the requirements of the Law and these Rules.
4. The selection process shall consist of the stages provided for in Article 19 of the Law.
5. An enterprise which is founded with equity participation of the state and/or municipality and in which the share of the state and/or municipality directly or indirectly is 30% or less, can participate in the selection process as a private partner.
6. Share participation of the enterprise(s) (founded with equity participation of the state and/or municipality) in the private partner of a PPP company shall not exceed cumulatively 30% of total shares; besides, such participation shall be in compliance with the investment strategy (if any) and risk profile of the enterprise(s) founded with equity participation of the state and its estimated return on capital and debt shall be comparable with those of the private investor and borrower for similar projects and instruments.
7. The enterprise(s) founded with equity participation of the state and/or municipality which participate in a PPP company shall be viewed as private partner(s) and shall not have preferential access to any information compared to other participants.
8. In agreement with the Government of Georgia and/or based on its decision, the authorized body can terminate the process at any time before signing the Contract. The participants of that particular stage of the selection process shall be notified about such decision and it shall be published using the same tool by means of which the selection process was announced.

Article 18. The Selection Commission

1. In order to exercise the authority provided for in the Law and these Rules, before starting the procedure for selecting a concessioner (with the exception of small projects), the authorized body shall form a Selection Commission the authority of which will and upon announcement of the winner or publication of an announcement on termination of the selection process. Members of the Selection Commission shall be appointed from among the persons provided for in Paragraph 18.5 of the Law.
2. Each member of the Selection Commission shall have one vote. The Selection Commission makes decisions based on the majority of votes of all Commission members. If the votes are equally divided, the chairman shall have the deciding vote. A member of the Selection Commission who does not agree with the Commission's decision shall have the right to submit his/her opinion in writing and the document shall be attached to the Selection Commission's decision.
3. In order to nominate representatives of other administrative bodies as the Commission members, the authorized body shall send a written request to the corresponding administrative body minimum 8 calendar days prior to starting the selection process.
4. The Selection Commission members shall sign a document confirming that there is no conflict of interest at each stage of the selection process.
5. Minutes of the Selection Commission meetings shall be prepared and signed by all of its members present at the meeting.
6. If needed, the Commission may invite independent consultants to participate at any stage of the selection process.
7. The Selection Commission's functions are as follows:
 - a) Cooperation with the authorized body in preparing the process documents and identifying the selection criteria for the best candidate;
 - b) Approval of the Statement of Intent to select a concessioner, in compliance with these Rules;
 - c) Definition of the qualification criteria and assessment of the qualifications of the selection process participants, in compliance with these Rules;
 - d) Assessment of submitted proposals and identification of the winner, in compliance with these Rules;
 - e) Implementation of all other activities necessary for conducting the process of selecting a concessioner in compliance with the procedures provided for in the Law and these Rules.

Article 19. Announcement of the Selection Process and the Qualification Stage

1. In order to announce a selection process the Selection Commission shall approve the Statement of Intent to select a concessioner and the authorized body shall ensure its publication.
2. The Statement of Intent to select a concessioner shall contain minimum the following information:
 - a) The authorized body's name, address, telephone number and email address;
 - b) Information about the concessioner:
 - b.a) Type of the Contract and the subject of the concession;
 - b.b) Sphere and type of the concession;
 - b.c) Period of the concession;
 - b.d) Estimated design value of the concession;
 - c) Information about the selection process:
 - c.a) Type of the selection process announcement (public/closed);
 - c.b) Timeframes for receiving applications;
 - c.c) Address for submission of documents;
 - c.d) Language(s) in which the documents must be presented;
 - c.e) Time and place of public opening of the applications.
 - d) Grounds for disqualification of candidates, including:
 - d.a) if the candidate recalls his/her own proposal;
 - d.b) if the proposal does not meet the conditions required in the selection documents;
 - d.c) if the candidate does not provide clarifications within the given deadline, the clarifications are not complete and/or the clarifications materially change the documents;
 - d.d) if the candidate refuses or otherwise expresses the refusal to sign the Contract;
 - d.e) if the candidate commits a dishonest action in order to receive the right to sign the Contract;
 - e) Information about the opportunities of the business and its compliance with the financial, technical, professional, and legal criteria and the information/documents that the candidate is required to submit in order to prove that he satisfies these criteria;
 - f) Information about the following rights of the authorized body, unless there is a different decision of the Government of Georgia:
 - f.a) The authorized body's right the refuse implementation of the selection process in agreement with and/or based on the decision of the Government of Georgia;
 - f.b) The authorized body's right not to sign the Contract as a result of the process, or to continue selection of candidates, or to send to the candidates a request to submit proposals;
 - f.c) The authorized body's right not to compensate any expenses carried by the selection process participant or any other person with regard to the selection process before or after the announcement;
 - f.d) The authorized body's right not to compensate any expenses carried by the winner of the selection process or any other person before or after signing the Contract.
3. Taking into account the specificity of the project, the Statement of Intent to select a concessioner may also contain some additional information. In case of a closed selection process the statement of Intent is not subject to publication in compliance with the rules provided for in this Article.

4. The Statement of Intent to select a concessioner shall be published minimum 30 calendar days prior to the starting date for submission of qualification documents by the selection process participants.
5. The Statement of Intent provided for in this Article shall be published on the official webpages of the authorized body, the Agency, and the Public Procurement Agency, while after creation of the corresponding electronic system – by means of the above electronic system. The authorized body shall have the right to publish the Statement of Intent using other alternative methods/sources.
6. The Selection Commission may require that the Statement of Intent to select a concessioner is published in the official language of Georgia as well as in one of those languages which are widely used in periodical and special publications in the field of international trade and widely published at the international level.
7. The authorized body has a right to make changes in the documentation of the selection process, with the exception of the conditions provided for in the Law. In this case, the deadlines of the selection process shall be extended by the period that has passed from the date of announcing the selection process until the date of making changes, except for the cases when the changes are of technical nature or made for correction of shortfalls or for clarifications.
8. The authorized body, by means of the Selection Commission, shall ensure identification of the process participants who satisfy the qualification requirements set by the Selection Commission.
9. The qualification requirements for a PPP project shall be defined by the Selection Commission, with participation of the Agency, in the documentation necessary for announcing the selection process. The qualification requirements shall contain minimum the following data:
 - a) Professional and technical qualification and human resources necessary for the project implementation, including in the fields of engineering design, construction, operation, and maintenance;
 - b) Ability to manage PPP project's financial aspects and meet the requirements for the project financing;
 - c) Managerial and organizational skills needed for the project implementation, including the experience of implementing similar projects.
10. If needed, the authorized body shall define the priorities of the qualification requirements.
11. The qualification requirements shall be known to all potential participants of the selection process in advance; they shall be related to the subject of the Contract and allow interpretation by the private partner. Besides, the qualification assessment criteria shall be defined in such a way that would promote competition and ensure the possibility of checking the information provided by the selection process participants.
12. The Selection Commission shall ensure assessment of the qualification of the selection process participants, assess each participant of the selection process and make a decision on his qualification or disqualification. While making such decision the Selection Commission shall base its judgment only on the qualification criteria defined in the qualification documents.

13. The selection process participant can submit the documents confirming his qualification data in the official state language of Georgia as well as in a foreign language, in compliance with the decision of the Selection Commission. If the documents are submitted in a foreign language, a version translated into the state language of Georgia in compliance with the rules provided for in the legislation shall be attached. In case of any dispute related to the qualification documents and inconsistency between the document submitted in a foreign language and its translated Georgian version, the original version shall prevail.

Article 20. Documents of the Concessioner Selection Process

1. Before the Selection Commission approves the documents for the selection process, the authorized body shall send the documents to the Ministry of Finance of Georgia for recommendations.
2. The Selection Commission shall have the right to set a reasonable fee for giving the selection process documentation to the participant.
3. The authorized body shall give the selection process documentation to an interested person (unless the documents are publicly available in an electronic format) within 2 working days after the request, while in case if a fee provided for in Paragraph 2 of this Article is set, within 2 working days after the fee is paid.
4. The documents for the concessioner selection process may include:
 - a) Instructions on submitting proposal for participation in the selection process;
 - b) Rules and criteria for assessing proposals and priorities of these criteria;
 - c) Project related documents;
 - d) Form of the proposal guarantees to be provided;
 - e) If case of an initiative proposal, the amount of expenses to be compensated to the private initiator by the winner of the selection process and the payment schedule;
 - f) Any other document requested by the Selection Commission.

Article 21. Invitation to Submit Proposals and submission of Proposals

1. The Selection Commission shall ensure approval of the documentation for the invitation to submit documents and send them (upload them into the electronic system - after creation of such system) to those candidates who successfully pass the qualification stage. Invited candidates can submit a proposal/application in compliance with the requirements set for submission of proposals. A winners or a short listed candidate shall be identified based on assessment of submitted proposals/applications.
2. The deadline set for submission of a proposal shall give to the selection process participant enough time for checking relevant documents and preparing proposals.
3. At the proposal submission stage it is allowed to organize both group and individual meetings of the Selection Commission with the selection process participants, which shall be specified in the documents of Invitation to Submit Proposals.

4. In agreement with the Agency, the documentation of Invitation to Submit Proposals must be approved by the Selection Commission taking into account the documents reviewed and approved at the project preparation stage and contain minimum the following information:
 - a) General information necessary for submitting a proposal, including description of the project's specific parameters, information about the project's assets/property, as well as instructions for the selection process participants on submission of applications, and project implementation deadlines;
 - b) Project specifications and implementation parameters, specifying necessary minimum quantitative and qualitative requirements and results at any and all stages;
 - c) Draft Contract.
5. The contents of the proposal/application to be submitted by the participant is approved by the Selection Commission and is part of the documentation of Invitation to Submit Proposals.
6. The proposal/application submitted by a participant shall include the following information and documents:
 - a) Guarantee of the proposal submitted for the selection process;
 - b) Taking into account the specificity of the project, corresponding technical proposal/application which includes all or part of the following:
 - b.a) Technical solution for ensuring the public service defined in the Invitation to Submit Proposals;
 - b.b) Description of the proposed work;
 - b.c) Proposed solution for operations;
 - b.d) Demonstration of the capabilities needed for achievement of the required results in quantitative and qualitative expression;
 - b.e) Issues related to environmental standards;
 - c) Taking into account the specificity of the project, corresponding financial proposal/application which includes all or part of the following:
 - c.a) Costs of the construction and project activities; annual costs of operation and maintenance, capital expenses; operation and maintenance expenses;
 - c.b) Proposed financial solution for ensuring corresponding services;
 - c.c) Estimated income received from provision of services;
 - c.d) Tariff/service fee/charge during the PPP Contract validity period;
 - c.e) Amount of financial support, if such is expected by the public institution;
 - c.f) Rates or profit distribution plan within which the private partner makes payments to the public partner for the right to implement the PPP project;
 - c.g) The main terms and conditions of the Contract, based on which the public institution shall fully or partially receive or pay the product price;
 - c.h) The project's total financial parameters/results and forecasted cash flows during the validity period of the PPP Contract;
 - d) Taking into account the specificity of the project, corresponding legal/commercial proposal/application which includes all or part of the following:

- d.a) Legal organization form of the selection process participant;
- d.b) Legal organization form of the private partner;
- d.c) Legal organization form of the whole concessional project which may include different Contracts between different parties;
- d.d) The project's compliance with the active legislation;
- d.e) Comments regarding the draft Contract if this is allowed in compliance with the documentation of Invitation to Submit Proposals.

Article 22. Guarantee for Securing the Proposal

1. The documentation related to the Invitation to Submit Proposals for the selection process shall include the information about the type, amount, form, period, and main conditions of guarantee that the participants shall submit for securing the proposal at the submission stage.
2. The authorized body shall have the right to use proposal guarantee only in case if the selection process participant:
 - a) Recalls or changes the proposal after the expiry of the term for submitting proposals;
 - b) Refuses to negotiate with the authorized body;
 - c) Refuses to sign a Contract (if so requested by the authorized body) after the proposal is adopted in accordance with set rules;
 - d) Refuses to submit a performance guarantee for the Contract after the proposal is adopted in accordance with set rules or, before signing the Contract, fails to fulfil any condition defined in the Invitation to Submit Proposals;
 - e) Fails to meet any other condition which was specified in the documentation of the Invitation to Submit Proposals and/or Identification of the Winner as the grounds for recalling the proposal guarantee.

Article 23. Assessment of Proposals

1. The criteria and rules of assessing proposals are defined by the Selection Commission, based on the specific features of the project, including the PPP project implementation period, the amount of required private funding, quality and/or other criteria of the work to be implemented/services to be provided or a combination thereof.
2. The technical assessment shall cover the following data (as required, taking into account the project's specific features):
 - a) Technical sustainability;
 - b) Compliance with environmental standards;
 - c) Operational expediency;
 - d) Service quality and its compliance with the project requirements /specifications /results and the measures for ensuring their continuity;
 - e) Correspondence of the technical proposal to the financial and legal proposals.
3. Assessment of the financial proposal shall cover the following data (as required, taking into account the project's specific features):

- a) Compensation payable during the Contract validity period (tariffs/ service fee / price / fees);
- b) Amounts payable by the authorized body and/or public partner (if any);
- c) Engineering design and construction costs, annual costs of operation and maintenance, capital expenses; operation and maintenance expenses
- d) The scope of the state's financial support (if any);
- e) The amount payable with regard to profit distribution within the scope of which the private partner makes payments to the public partner in return for the right to implement the PPP project;
- f) Time planning, sequence and accessibility;
- g) Correspondence of the financial proposal to the technical and legal proposals.

4. Assessment of the legal proposal shall cover the following data (as required, taking into account the project's specific features):

- a) Legal organization form / legal status of the selection process participant;
- b) Planned legal organization form of the private partner;
- c) Compliance of the infrastructure/service produced by the project with the active legislation;
- d) Comments made regarding the draft Contract (if this is allowed in compliance with the documentation of Invitation to Submit Proposals);
- e) Correspondence of the legal proposal to the financial and technical proposals.

5. Upon completion of the assessment process in compliance with this Article, the Selection Commission shall submit to the authorized body a detailed assessment report regarding the each component provided for in this paragraph, together with the justifications of the Commission's decision.

Article 24. Negotiations and Announcement of the Winner

1. No earlier than in 5 days, the authorized body will invite the selection process participants, shortlisted participants or the selection process winners for negotiating the Contract conditions.
2. The negotiations shall not cover those issues (if any) which, according to the documentation of the Invitation to Submit Proposals are not subject to negotiation, as well as the main/principal aspects provided for in the documentation of the Invitation to Submit Proposals.
3. The Assessment Report prepared by the Selection Commission and the final agreed (negotiated) conditions of the Contract shall be submitted by the authorized body to the Ministry of Finance of Georgia for review, for the goals provided for in the Law.
4. The Ministry of Finance of Georgia shall submit to the authorized body its conclusion regarding the draft Contract, after which the authorized body shall ensure that the Contract conditions, together with the conclusion of the Ministry of Finance of Georgia, are submitted to the Government of Georgia.
5. The Government of Georgia must either make a decision on approving the Contract conditions and signing the Contract or return the issue to the authorized body for making additional changes

in the draft Contract, including based on the issues/comments specified in the conclusion of the Ministry of Finance.

6. If the authorized body considers that it is impossible to sign a Contract with the selection process participant /shortlisted candidate or winner, the authorized body must stop negotiation with him. In this case, the authorized body must either invite and negotiate with the candidate who has the next best results until an agreement is achieved, or decline all other applications. The authorized body shall not renew negotiations with the participant the negotiations with whom have been terminated in compliance with this Article. The authorized body shall have the right to carry out negotiations with the shortlisted participants of the selection process in a parallel regime. In this case, the authorized body shall inform the shortlisted participants of the selection process in writing.
7. The authorized body shall send/upload into the electronic system (if any) the announcement about identification of the winner and publish this information on the official webpages of the authorized body and the Agency. This information shall contain the name of the private partner and the main conditions of the Contract.
8. The Agency shall ensure that all information related to the selection process and announcement of the winner is stored in case of each Contract.
9. In case of direct negotiations, the publicly accessible information published on the webpages of the authorized body and the Agency shall, as a minimum, include the draft Contract, final feasibility study, independent research/assessment (if any), and a summary of the project's main financial indicators, with the exception of confidential information protected in compliance with the rules provided for in the Georgian legislation.

Article 25. Rules for the Closed Selection Process

1. The closed selection process is carried out without the Selection Process Announcement stage. In this case the persons identified for the selection process are given written notifications.
2. Before starting the closed selection process, the authorized body shall:
 - a) Upon Contract with the Agency, submit to the Government of Georgia corresponding information and provide justification of the preferability to carry out a closed selection process in order to receive a consent for its implementation;
 - b) Ensure participation of minimum 3 candidates in the process.

Article 26. Initiative Proposal

1. A private initiator shall have the right to prepare and submit to the corresponding line ministry an initiative proposal about a concession in the energy sector. A copy of the initiative proposal shall be submitted to the Agency by the private initiator.
2. The initiative proposal shall be formulated in a way which would allow preliminary assessment of the offered project, its potential and the opportunity of implementing it in the form of a PPP project.

3. After an initiative proposal is received and its preliminary assessment completed, the line ministry, in cooperation with the Agency, shall review the submitted proposal and find out whether or not the project satisfies the following criteria:
 - a) Whether the needs assessment shows that the project satisfies the state and public needs;
 - b) Whether compared to a project initiated by the state this project will produce value added and/or innovation.
4. The line ministry is authorized to request the private initiator to provide additional information and documents necessary for the line ministry to properly assess the initiator's qualification and feasibility of the proposed project as well as the possibility of its successful implementation in the form acceptable for the public partner.
5. If the initiative proposal satisfies the requirements provided for in this Article and is acceptable for the line ministry, the line ministry will ensure implementation of the activities provided for in these Rules in order to initiate the project.
6. If the Project Concept is accepted by the Government of Georgia, the authorized body is authorized to request the initiator (both in case of direct negotiations or otherwise) to prepare a feasibility study and other studies at the initiator's own expense. Implemented studies will be submitted to the line ministry which will ensure submission of the project to the Government of Georgia in compliance with all procedures required at the preparatory stage. The line ministry's conclusion about the expediency of implementing the project shall also be attached to these assessments. In compliance with Article 16 of these Rules, the Government of Georgia shall make a decision within 120 days after submission of the initiative.
7. Before submission of the initiative proposal, the private investor shall have the right to discuss or exchange information with the corresponding line ministry regarding the specifics of the potential project and modify the project accordingly.
8. In order to ensure full and proper assessment of the proposed project the line ministry, in cooperation with the Agency, shall have the right to hire consultants to carry out a feasibility study of the project or to review the private initiator's assessment and help during the selection process.
9. If requested, the private investor must also submit a draft Contract on the main concession conditions. The private investor shall also submit a detailed cost estimate reflecting the expenses that need to be incurred before submission of the final proposal about the project (except for the internal engineering, legal, and financial costs).
10. An initiative proposal shall be declined in writing.
11. An initiative proposal can be declined:
 - a) If it is made regarding a project for which the selection process has already started and/or announced;
 - b) If it does not satisfy the criteria defined in this Article;
 - c) If the results of the project's feasibility and financial analysis are not satisfactory;

- d) If the project is not financially affordable or contains big risks for the public partner because of the public partner's participation, funding, guarantees or obligations to be taken, or if the offered draft conditions are not duly balanced and besides the Ministry of Finance of Georgia gives a negative opinion about the project and the project is not accepted by the Government of Georgia.
11. If the feasibility study is indorsed and the line ministry decides to implement the initiated project, the Ministry shall ensure that the selection process is started in compliance with the selection stages or through conducting direct negotiations, based on the consent of the Government of Georgia, in the cases provided for by the Law and exclusively in the energy sector.
 12. Selection through direct negotiations shall be carried out in compliance with the closed selection procedure in which case there is no obligation to have 3 candidates. The process shall be transparent and allow to achieve results as much as possible similar to those provided in case of competitive selection.
 13. If the selection process is announced as a result of an initiative application submitted by a private initiator, at the selection process announcement stage it shall be specified that the selection process is based on an initiative proposal.
 14. The private initiator may be given an advantage which shall be specified in the selection process documentation and according to which, if the selection process is won by a participant other than the private initiator or its affiliated entity, the winner must compensate to the private initiator reasonable, justified and properly documented direct expenses incurred by the private initiator for preparation and submission of the initiative proposal. The amount of such expenses will become public at the selection stage. The amount shall not exceed the guarantee amount which must be submitted by the participants for securing the proposal.

Article 27. Small Projects

1. Small projects are identified and initiated by the authorized body. The authorized body shall submit the project concept to the Agency and the Ministry of Finance of Georgia.
2. Based on the assessment of possible risks the Ministry of Finance of Georgia or the Agency shall be authorized to request the authorized body to carry out the feasibility study. Based on this request the authorized body shall, in consultation with the Agency, implement a simplified feasibility study, the format and rules of which may be defined by the Agency in the Manual on Methodology and Practice.
3. Based on the corresponding assessments, the Ministry of Finance of Georgia shall submit to the Agency and the authorized body a conclusion on the small project assessment results and fiscal risk mitigation measures. The authorized body shall take into account the submitted proposals.
4. If a small project contains fiscal risks, the draft Contract on the small project implementation shall be submitted to the Government of Georgia. In this case, the conclusion of the Ministry of Finance of Georgia will be considered as recommendation.

5. In case of a small energy sector project, the authorized body shall submit the draft Contract to the Government of Georgia for review.
6. A contractor for a small project shall be selected in compliance with the Law of Georgia on State Procurement, while a concessioner shall be selected in compliance with Paragraph 18.4 of the Law, without the obligation to form a Selection Commission.
7. In case of small projects, the authorized body shall carry out the selection procedure in a simplified way, in compliance with the PPP principles (including by means of a closed selection process).

Article 28. Amendments

1. In the cases provided for in the Law and Paragraph 2 of this Article, the public partner shall submit to the Ministry of Finance of Georgia and/or the Government of Georgia draft amendments to be made to the Contract, including those to be made in the effective memorandums/Contracts signed before the effective date of this Decree with regard to PPP projects and small projects. If the amendments to be made in the Contract do not provide for any of the conditions specified in Subparagraph 2(b) of this Article, the Ministry of Finance of Georgia shall inform the public partner about this after which the Contract parties shall have the right to sign the Contract amendment (except for the cases provided for in Subparagraphs 2(a) and 2(c)).
2. The cases in which draft amendments shall be submitted to and agreed with the Government of Georgia shall be as follows:
 - a) If the amendment concerns the main agreement conditions, including those provided for in Paragraphs 21.1 and 21.2 of the Law;
 - b) If the Ministry of Finance of Georgia identifies fiscal risks or needed fundamental changes and the amendment to be made to the Contract influences the initial cost by more than 20% and/or if the value of the amendment exceeds the limit set for small projects;
 - c) If the Government of Georgia is the Contract party.
3. The Government's approval of the amendments shall be based on the updated part of the feasibility study (if the amendment influences any component of the feasibility study) which must reflect the proposed amendments to be made according to the same components which existed in the initial study, as well as the reasons of economic advantages or changes, social and environmental impact assessment, and the influence of the project amendment on the financial and fiscal sustainability if the amendment concerns the above aspects.
4. The Ministry of Finance of Georgia is authorized to give to the authorized body proposals on redrafting draft amendments and the opinion on whether or not the amendments must be made in compliance with the existing conditions or some other conditions. The draft Contract amendments and the proposal of the Ministry of Finance shall be submitted by the authorized body to the Government of Georgia, which will either make a decision on signing the draft amendments or demand additional changes to be made in the agreed conditions, in order to ensure that the draft reflects all relevant issues, including the proposals of the Ministry of Finance.

Article 29. Institutional Public-Private Partnership

1. A private partner for an institutional PPP company which is founded or has to be founded within the framework of institutional public-private partnership, shall be selected in accordance with the procedures set for selection of a concessioner or contractor.
2. Those provisions of the Law that concern concessioners or contractors shall also be extended to those relations of PPP companies in which the PPP Company acts as a concessioner or contractor.
3. In case of institutional public-private partnership, qualification criteria and other requirements necessary for receiving the rights of a private partner shall take into account the maximum share that the public partner is allowed to own, so that the public partner's participation does not exceed 50%, except for the cases when this is one of the criteria of the selection process and/or one of the main conditions of agreement between the PPP company's partners. The Contract and the partners' agreement shall be deemed material and integral part of the project documents.
4. The partners' agreement shall contain description of the rights and obligations of each party under the Contract and the private partner's managerial functions and responsibilities in the PPP Company.

Article 30. The Contract

1. The Contract shall be signed within the project, including in case of an institutional public-private partnership. The initial draft of the Contract shall be an integral part of the Invitation to Submit Proposals announced in compliance with the Law. The Draft Contract shall define the conditions provided for in Article 21 of the Law as well as the issues resulting from the specifics of the project. The Contract may also contain provisions on other issues agreed between the parties.
2. The Contract may also define the types of support and compensation provided for in Article 28 of the Law.
3. In compliance with Subparagraph 1(d) of Article 28 of the Law, in the energy sector it is possible to grant guarantees for long-term purchases of certain types of goods and services based on the prices agreed between the parties.
4. The Contract shall provide for the possibility to impose a penalty for the private partner's failure to fulfil an obligation. The minimum amount of such penalty shall be no less than 0.01% of the total project cost for each day of delay. The penalties (imposed/ to be imposed as one-time or repeated sanction) which are not related to the party's failure to meet the deadline of fulfilling an obligation, shall be defined in the documentation of the Invitation to Submit Proposals and the Contract.
5. The maximum amount of the Contract implementation guarantee shall be 10% of the project cost.
6. The penalty imposed on a private partner can be forgiven by the Government of Georgia based on a well substantiated intermediation of the public and private partners or the PPP Company which proves that the delay is caused by objective circumstances beyond the private partner's control. The Government of Georgia shall have the right to form a commission for making a decision on this issue.

7. In case of a non-concessional PPP, imposition of penalties and claims for possible compensations provided for in the Contract shall be based on the performance results. The penalty's impact on the private partner's revenues must be significant and proportionate to the performance quality and volume.
8. The Contract term must be defined by the authorized body taking into account the requested services and/or work. The maximum concession term shall not exceed the reasonable period in which the concessioner is expected to fully recover the investments and receive profit in return for the implemented work and/or provided services (taking into account the investment amount necessary/requested for achieving the goals provided for in the Contract). For the purpose of calculating the investment, an "investment" includes the total investment to be made during the effective term of the concession contract.
9. Besides the principles provided for in the Law, the Contract shall be based on the following approaches:
 - a) Performance targets /plans: the PPP Contract shall define the parameters of the performance results and contributions;
 - b) One-time or repeated sanctions and compensations: one-time or repeated sanctions and compensations shall be linked to the implementation of performance targets;
 - c) Insurance: the public-private partnership shall envisage the insurance requirements in compliance with the practices existing at the market and the access to risk insurance;
 - d) Force majeure: the PPP Contract shall provide for a regime during which a party must be released from obligations and, after a certain period receive a right to terminate the Contract in case of unforeseen circumstances which are beyond the party's control and make the obligation implementation impossible;
 - e) Early termination of the Contract: a compensation for early termination of the Contract or one-time or repeated sanction can be imposed on a public partner only in cases directly provided for in the Contract and its amount and/or calculation formula must be directly provided for in the PPP Contract.

Article 31. The Upper Threshold for Financing Public-Private Partnership

1. The maximum threshold for the state's obligations under the public-private partnership shall be defined in the legislation regulating the public finance. Before December 31, 2018, the Ministry of Finance of Georgia shall prepare a proposal in order to define the above threshold and reflect it in the legislation regulating the public finance.
2. It shall be prohibited to violate the maximum threshold in a PPP project.

Article 32. Monitoring

1. If needed, for the purpose of monitoring of a PPP project by the public partner, with participation of the Agency, the public partner can create a project monitoring team or a special structural unit or assign this function to an existing structural unit. This function of this team/structural unit shall be to control the project implementation during the validity period of the Contract.

2. The annual report on the project implementation prepared by the monitoring team/structural unit and signed by the public partner will be submitted to the Agency. The form of the report and the template for requesting corresponding information may be defined in the Manual of Methodology and Practice.
3. The report provided for in Paragraph 2 of this Article shall be publicly accessible on the official webpage of the public partner.

Article 33. Post-implementation Assessment

1. The post implementation assessment report which shall be prepared within the timeframes provided for in Article 33 of the Law, shall be submitted by the public partner to the Agency and the Ministry of Finance of Georgia.
2. The Agency and the Ministry of Finance of Georgia shall analyze the submitted report and develop corresponding recommendation, namely:
 - a) The Ministry of Finance of Georgia shall submit to the Agency integrated assessments of public partners, together with recommendations on the ways of improving PPP assessments and processes in future;
 - b) Based on the recommendations received from the Ministry of Finance of Georgia and assessments made by the authorized body, the Agency shall prepare and submit to the Government of Georgia an integrated assessment and recommendations on the ways of improving PPP assessments and processes in future;

Article 34. Accessibility of the Information

Information about the project, its development and implementation is publicly accessible, except for the documents which the Georgian legislation deems confidential and unless they contain data related to state security or the private partner's intellectual property.