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USAID ENERGY PROGRAM

LEGAL PROCEDURES APPLIED TO PROJECTS NOT RELATED TO PPP LEGISLATION

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24 July 2019

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DATA

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ACRONYMS

EnCT	Energy Community Treaty
EU	European Union
GoG	Government of Georgia
MoESD	Ministry of Economy and Sustainable Development of Georgia
MW	Megawatt
OECD	Organization for Economic Co-operation and Development
PPP	Public-Private Partnership
USAID	United States Agency for International Development
USD	United States Dollars

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INTRODUCTION

In October 2016, Georgia signed the Energy Community Treaty (EnCT) signaling the country's commitment to direct future energy planning and market development towards approximation with the European Union (EU). This step commits Georgia to enhance the security of energy supply by promoting the development of relevant infrastructure, increasing market integration and gradual regulatory approximation towards key elements of the EnCT, and promoting the use of renewable energy sources. In order for Georgia to meet its strategic commitments in the energy sector, the United States Agency for International Development (USAID) is providing technical assistance and policy advice on legal, regulatory and institutional reform issues, including facilitating investment and deal structuring, engineering and environmental analyses, financial planning, and outreach, and other consulting. This technical assistance, ("USAID Energy Program") is being rendered by Deloitte Consulting LLP, under a USAID contract, AID-OAA-I-13-00018.

The objective of USAID Energy Program is to support Georgia's efforts to facilitate increased investment in power generation capacity as a means to increase national energy security, facilitate economic growth, and enhance national security. The project will have a significant impact on energy market reform efforts of the Government of Georgia (GoG) to comply with the country's obligations under the EnCT. The investment objective will be achieved through the provision of technical assistance to a variety of stakeholders in the energy sector.

The purpose of USAID Energy Program is to: (1) support Georgia in energy market development per Georgia's obligations under the EnCT, (2) build the capacity of the GoG and relevant institution(s) to evaluate the fiscal and long-term impacts of regulatory changes, (3) promote energy investments, primarily in variable renewable energy development, (4) support integration of non-hydro renewable energy into the power system, and (5) provide strategic advisory services to the GoG to increase Georgia's energy security.

The ultimate goal of this Program is to enhance Georgia's energy security through improved legal and regulatory framework and increased investments in the energy sector. The ultimate expected outcome of this Program is an energy market legal and regulatory framework that complies with European requirements and encourages competitive energy trade and private sector investments.

USAID Energy Program is tasked under its contract, AID-OAA-I-13-00018, to assist Developers with Regulatory Approval, Interconnection, and Institutional Issues. Most projects require guidance on application, power purchase, interconnection and related technical and procedural requirements. The project intends to help Developers navigate the GoG processes quickly and transparently through providing appropriate legal recommendations and guidance to project Developers to transverse the development process.

EXECUTIVE SUMMARY

Development and implementation of projects mostly fall under the regulations established by the law of Georgia on Public-Private Partnership (PPP) and the government resolution on Approval of the Rules of Developing and Implementing PPP Projects. The exemptions from the so-called PPP legislation are projects on Conducting the Construction Feasibility Study, Construction, Ownership and Operation of those Power Plants which are not PPP Projects.

The main findings listed below will be useful for the developers desiring to construct, own and operate the power plants in Georgia. In addition, the document will provide the main procedures related to obtaining approval from the GoG and main requirements faced by the developers in terms of meeting the rules and regulations set by the legislation.

The document runs for energy investment optimization and ensures assistance to the GoG in drafting, commenting and reviewing secondary legislation, clear and transparent rules, in administrative and licensing procedures, and simplified permitting requirements to expediate approvals from the multiple institutions involved in the energy project development.

GENERAL RULES AND PROVISIONS

Developing and implementation of energy sector project related to hydro, solar, wind, or any other type of a power plants, which are not PPP projects, fall under the Government Decree #515 on Rules and Conditions of Submitting to the Ministry of Economy and Sustainable Development of Georgia (MoESD) and Reviewing the Proposals on Conducting the Construction Feasibility Study, Construction, Ownership and Operation of those Power Plants which are not PPP Projects.

THE SUBMISSION PROCEDURE INCLUDES THE FOLLOWING ACTIVITIES

The interested person (here and after the Developer) shall submit to the MoESD a written application containing the following information:

- The name of the Ministry;
- Information on the applicant (name, identification number, legal / actual address and telephone number);
- A Request (including a statement made in advance regarding the applicant's refusal to implement a public-private partnership project);
- A request to protect confidentiality of submitted documents (if required);
- Date of submitting the application and the applicant's signature;
- List of documents attached to application.

The interested person shall attach to the application a prefeasibility study (hereinafter – prefeasibility study), which shall contain the following data:

- The location and main parameters of a facility;
- A topographic map of the potential construction site (scale – 1:25000);
- Brief geological data and geological map of the site (based on the materials available in the data fund);
- Seismic data and seismic map of the territory;
- Hydrological and meteorological data (average monthly parameters), in case of a wind farm – wind parameter observations, while in case of a solar power plant - observations on solar parameters;
- Energy generation model (forecasted generation);
- Initial assessment of the environmental impact;
- Possible grid connection scheme and the grid's capacity to receive generated electricity;
- Information about the infrastructure (the existing roads and roads under construction must be shown on the topographic maps, specifying presumable distances);
- Forecasted cost estimate;

Economic report (analysis of the project's economic characteristics, taking into account the investment volume, period, and credit interest).

**Language – Georgian
Form - hard copy; Electronic format**

The Ministry shall check the compliance of an application and attached documents. The Ministry will give a reasonable time to an interested person to submit proper documents, where appropriate.

The timeline for reviewing by the MoESD is one month. However, it can be extended but not exceeding three months.

The proposals (together with attached documents) which satisfy the requirements of the active legislation and the Rules shall be submitted by the Ministry to the Government for decision.

If the Government approves submitted proposal(s), a corresponding legal statute shall be issued, after which an agreement / memorandum will be signed between the Government and an interested person in 3 months.

AGREEMENT / MEMORANDUM CAN BE CONSISTENT OF 2 PHASES

Preconstruction Phase

Construction Phase

ASSISTANCE FROM THE GOG

The Government should, where appropriate:

Give the state-owned land spot (s)

Assistance to receive the license(s) or permit(s) if Project Implementation Entity comply the corresponding license or permit conditions with the active legislation

BANK GUARANTEE REQUIREMENT

- The Bank Guarantees Required for the Agreement / Memorandum; should be submitted within 30 (thirty) calendar days and should be issued in any of the Organization for Economic Co-operation and Development (OECD) member countries and/or by a bank licensed in Georgia. The Bank Guarantee amount shall not exceed 15% of the issuing bank's equity capital. Besides, the period of the bank guarantee shall exceed the deadline for the implementation of the agreement / memorandum obligations by minimum 5 months;
- Amount of Bank Guarantee: the preconstruction guarantee is a Bank Guarantee calculated based on the total installed capacity of the power plant - USD 5 000 (five thousand) or its equivalent in EUR (based on the exchange rate set by the National Bank of Georgia at that time) for each MW. The Construction Guarantee is a Bank Guarantee calculated based on the total installed capacity of a power plant or a cascade of power plants: in case of 100 MW power plants / power plant cascades – USD 100 000 (hundred thousand) for each MW, while in case of power plants / power plant cascades of more than 100 MW – USD 50 000 (fifty thousand) or its equivalent in EUR (based on the exchange rate set by the National Bank of Georgia at that time) for each megawatt;
- In case of violating the terms of submitting bank guarantee, the Agreement / Memorandum shall be terminated;
- The Penalty for violation terms and conditions, provided in agreement / memorandum, is defined as 1.5% of the total preconstruction/construction guarantee for each delayed day. The imposed penalty shall be paid within 15 (fifteen) calendar days following the receipt of the Ministry's request by the Project Implementation Entity. If the payment is not made within the above period, the Ministry shall have the right to take the penalty amount from the bank guarantee, on behalf of the Government. If the bank guarantee amount is reduced, the Project Implementation Entity shall fill it within 30 calendar days;
- If the sum of penalties imposed on the Project Implementation Entity under Paragraph 4 of this Article equals 50% of the total bank guarantee, the Government shall have the right to terminate the agreement/memorandum unilaterally. In this case, the Government will demand the whole amount of bank guarantee.

!!! Exemption for release from the obligation to submit a preconstruction guarantee is only applicable for a wind farm and / or solar power plant.

RESPONSIBILITIES OF THE DEVELOPER (PROJECT IMPLEMENTATION ENTITY)

The Developer:

- shall meet the obligations taken under the agreement / memorandum, comply with the requirements of the active legislation, and submit to the Ministry information about the implementation of such obligations upon request;
- shall have no right to fully or partially transfer the project implementation right to another party or encumber it in any way without a preliminary consent of the Government. Besides, the Developer shall be responsible for the maintenance and protection of the power plants constructed within the project;
- In case of the Government's consent, shall transfer the project implementation right to a new owner under the same conditions which were provided for in the agreement / memorandum signed with the Government;
- If during the agreement / memorandum validity period, the Developer partially transfers the project implementation right to a new owner, the new owner and the Developer shall be jointly liable for the implementation of obligations taken under the agreement / memorandum;
- After the document (an audit conclusion), proving implementation of the obligations taken under the agreement/memorandum, is submitted to and checked by the Ministry, it shall be submitted to the Government;
- If the obligations, taken under the agreement / memorandum, are not fulfilled, the Developer shall be given a warning notice, in writing, specifying the period for correcting the violation and the penalty amount. The amount of the penalty shall be defined in compliance with the agreement / memorandum and these Rules, as well as taking into account the agreement obligations;
- A repeated failure to meet the agreement / memorandum conditions and / or failure to pay the penalty within the set period will serve as a basis for unilateral termination of the agreement / memorandum by the Government. In this case, the project and corresponding property (including the project related intellectual property) will be transferred to the Government free of charge. The amounts paid and expenditures incurred by the Developer will not be reimbursed;

RECOMMENDATIONS

Overall, the proposed project will have a positive impact by increasing the electricity generation from renewable sources, which in turn will significantly facilitate the enhancement of total electricity within the country and thus will help the energy sector to prevent the import of energy from the neighbouring countries. Hence it is recommended that:

1. Developer should apply to the MoESD to implement the project according to the procedure described in the section **General Rules and Provisions**;
2. In case of a positive decision, Developer should follow up the active legislation including the provisions envisaged in Government Decree #515;

Developer should Ensure a timespan and sufficient documentation required under the above-mentioned legal acts.

USAID Energy Program

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