

**Resolution of the Government of Georgia
N438**

12 September, 2016 year,

Tbilisi

About the rules and terms of the tender to appoint an authorized person to organize and operate the Georgian lottery, the tender bids payable to the state budget and the terms for their payment and bank guarantee amounts and the terms of their use for ensuring the fulfillment of the tender proposal and the final agreement

In accordance with the 6th article of the Georgian law "About lottery, gambling and prize game arrangements" and the 25th article "About normative acts":

1. with the purpose of ensuring conducting a tender for the award of an authorized person for organizing and conducting lottery in Georgia to be approved enclosed "Rules and terms for the award of the authorized person on organizing and conducting lottery in Georgia, the amounts and the rules of payment of payable amounts in the state budget and the bank guarantee amounts and the terms of their use for ensuring tender proposal and agreement fulfillment."
2. To be declared invalid Resolution of the Government of Georgia No. 70 issued on 6 April, 2009 "About the approval of the rules and conditions of conducting tender to award the authorized person on organizing and conducting lottery".
3. The resolution shall become effective upon from 7 September, 2016.

Prime Minister

George Kvirikashvili

Rules and terms of the tender to appoint an authorized person to organize and operate the Georgian lottery, the tender bids payable to the state budget and the terms for their payment and bank guarantee amounts and the terms of their use for ensuring the fulfillment of the tender proposal and final agreement

Article 1: The scope of the Regulation

These rules and terms of the tender to appoint an authorized person to organize and operate the Georgian lottery, the tender bids payable to the state budget and the terms for their payment and bank guarantee amounts and the terms of their use for ensuring the fulfillment of the tender proposal and final agreement (afterwards – the Rules) defines issues regarding the announcement of the tender, the selection, discussion and evaluation of the tender proposal(s), suspension of the procedure, tender bids payable to the state budget and the terms for their payment, bank guarantee amounts and the terms of their use for ensuring the fulfillment of the tender proposal and final agreement and other tender-related issues.

Article 2: Definition of the terms

The terms used in this Rule have the following definitions:

- a) Ministry – Ministry of Finance of Georgia
- b) Tender – The tender process conducted to award the exclusive right of organizing and operating the Georgian lottery;
- c) Person – Resident or non-resident individual or legal entity;
- d) Bidder – Legal entity which presented a tender proposal and is registered in Georgia;
- e) Tender Commission – The Commission, formed by Minister of Finance, which exercises the competencies defined by this resolution and other legislations;
- f) Lottery operator – the person who has won the tender organized by the Ministry of Georgia according to the law – the person whom has been granted the Exclusive Right to operate the Lottery and who acts according to the law and conditions of the agreement.

Article 3: Drafting and publication of the conditions of application for conducting the tender

- 1. The announcement on conducting the tender and Tender Documentation will be drafted by The Tender Commission and Ministry together and they will present it to the Government of Georgia. The abovementioned process will be described in the board minutes of the Tender Commission.
- 2. The announcement of the Ministry about conducting the tender includes but is not limited to: The announcement in those periodical publication (publications) which are widely spread in Georgia; also, in English in foreign countries' periodical or specialized publication(s) which are widely spread; The issue of the announcements to foreign diplomatic and consular representatives accredited in Georgia.
- 3. The Tender Commission will publish the announcement on conducting the tender not less than 20 days before the starting of proposal-receiving process.
- 4. The announcement of the tender should include:
 - a) Contact information of The Ministry

- b) Tender documentation language, disbursement details, timeline and location
- c) Tender Proposal language, submission deadline and location
- d) Other information, requested by the Tender Commission

Article 4: Tender Documentation

1. "Tender Documentation" within this Rule, represents the documentation package which includes the full information regarding the main procedures of the tender.
2. The Tender Documentation shall include following documentation and information:
 - a. Requirements for Bidders to be met in order to participate in the tender
 - b. Instructions regarding the composition and presentation of Tender Proposal
 - c. Indication, that the Tender Proposal shall be composed in English language
 - d. Tender Proposal submission deadline, opening date and location
 - e. Information regarding the communication channels with the Tender Commission
 - f. Request, regarding the Tender Proposal's validity term
 - g. Information regarding tender participation bank guarantee ensuring Tender Proposal and the terms of use
 - h. Information regarding the bank guarantee securing contract performance and the terms of use
 - i. Other information, requested by the Tender Commission
3. This Rule will be provided to the Bidder, along with Tender Documentation (as its part).
4. This Rule takes precedent with respect to the Tender Documentation and the Announcement and the Tender Documentation takes precedent with respect to the Announcement.

Article 5: The process of selection, discussion and evaluation of Tender Proposal

1. The Tender Proposal will be presented to the Tender Commission in two sealed envelopes specifically marked: "Envelope No. 1" and "Envelope No. 2". "Envelope No. 1" shall include documentation and information listed under Point 12 of this article, along with any other documentation which is considered by the Bidder to be necessary and eligible to be placed in the envelope by the terms of this document. "Envelope No. 2" shall include documents, listed under Point 13 of this article. Tender Proposals submitted after the deadline will not be considered and will be returned back to Bidders.
2. After receiving the Tender Proposals, General Information part of the Envelope No. 1 will be evaluated first either positive or negative. If Envelope No. 1 was evaluated negatively, the respective proposal will not be evaluated on the next stage. Envelope No. 1 will be sent back to the bidder and it will be removed from the tender. In addition, Envelope No. 2 will not be open and will be returned to the bidder sealed.
3. The first step following the opening Envelope No. 1 is the selection.
4. The selection process includes the process of verifying if all documents are included.
5. In the selection process, the Tender Commission classifies Tender Proposals by the following, criteria:
 - a. Tender Proposals which are acceptable
 - b. Tender Proposals which are not acceptable because of significant misstatements or non-compliance with tender documentation

6. Bidders can attend Tender Commission meetings for the opening of both Envelopes No. 1 and No. 2 and also in event of the circumstances described under Point 17 of this article. In all other cases the Tender Commission meetings are closed, so all information which is related to the discussions of Bidders' proposals is confidential and it is strictly prohibited to spread such kind of information to third parties or to the competing Bidders.
7. The Tender Commission has a right to invite experts and/or consultants in the process of discussing the proposals. The discussion of experts' and consultants' opinions will take place during the Tender Commission meetings.
8. The Bidders are not disqualified if their Tender Proposals contain mistakes that do not materially differ from the requirements of Tender Documentation, this Rule and/or the announcement of the tender or those which can be easily corrected without changes to the content of the statement ("minor mistakes").
9. In case of a minor mistake the Tender Commission can correct it if there is a misalignment between the amounts stated in numerical and verbal forms (priority goes to the amounts stated in verbal form) .
10. Tender Proposals (i.e. Envelopes No. 1 and No. 2 together) will not be acceptable and evaluated in following circumstances:
 - a. Not all of the mandatory documents (including supporting documents) and/or information is submitted
 - b. if the Bidder cannot reconfirm qualification details upon the Tender Commission's request,
 - c. If the Tender Proposal is not fully presented
 - d. If during the tender process the Bidder acts illegally
 - e. If the information or its accompanying documentation provided by Bidder is false
 - f. If documentation is not provided in the required format. (Signature of authorized person, dated and etc.)
 - g. If the Tender Proposal does not include information and documentation, indicated under Point 12 of this article.
11. The aim of evaluation of Bidders is to compare their financial performance technical capabilities, personnel qualification, reputation, experience, and the amounts bid which will be paid to state budget for exclusive right to organize lottery in Georgia and other data and characteristics.
12. The Envelope No. 1, which includes the Bidder's qualification details and technical proposals, must include the following documents and information:
 - a. Bidder's/owner's background information
 - b. Information regarding relevant experience of Bidder/owner
 - c. Information regarding judicial decisions against Bidder (if applicable), which may restrict the Bidder's operations, also information regarding breaking of obligations and other
 - d. Information about financing
 - e. Tender participation bank guarantee on the amount of USD 5,000,000
 - f. Business plans for Years 1 - 5 and Years 6 - 10
 - g. Other relevant information which is specified by the Tender Documentation
13. Envelope No. 2 should include information about the bid amount (one-time payment) to obtain the right to organize and conduct lottery in Georgia. The amount, which should not be less than USD 5,000,000. The amount must be stated in USD.

14. The successful Bidder must pay the amount indicated in Envelope No. 2 or, if applicable the amount which is proposed in accordance with Point 17 of this article, before signing the agreement of exclusive right.
15. If after detailed analysis, study and evaluation of documentation and information submitted in the Envelope No. 1, Envelope No.1 meets the requirements of Tender Documentation, Tender proposal will be considered as acceptable and Envelope No. 2 will be open.
16. If two or more Envelope No.1-s will be considered as acceptable then the Bidder who bid the largest amount in Envelope No.2 will be preferred.
17. If the amounts in Envelope No. 2 under Point 16 of this article are also the same, the Tender Commission will invite and inform Bidders about it. After this, Bidders will have additional 10 days to make an increased bid to be paid to the state budget. Each new bid should be more than the previous. The presentation of every new bid has the same procedure as that for the initial submission of Envelope No. 2. If the Bidder will not submit a new bid, it will be removed from the tender. If none of the Bidders submit a new bid the Tender will be cancelled. The selection process will go on until one of the Bidders proposes highest amount.
18. The Tender Commission makes decision about successful Bidder according to the criteria listed in Tender Documentation and amount of payment to state budget for exclusive rights to organize lottery in Georgia.
19. The decision of the Tender Commission about the successful Bidder will be attached to the Tender Commission meeting minutes, along with Tender Commission's members' evaluation. The minutes should include information about the Tender Commission's members and Bidders.
20. After making the decision, the Tender Commission will inform all Bidder about the results within 5 days and will sign the agreement with successful Bidder in 30 days period.
21. Documentation presented by non-resident Bidders shall be issued and authorized by the rules listed in Tender Documentation.

Article 6: Conditions for Avoiding Conflict of Interests

1. Each individual who represents the Ministry's interests in the tender process (including the Tender Commission's members and invited experts and consultants) must avoid a conflict of interest in any circumstances and for any reason.
2. If any of individuals mentioned under Point 1 will face a conflict of interest, they shall stop participating in tender process.
3. Individuals who represents the Ministry's interests in the tender process will face conflict of interest if they:
 - a. Participate in tender
 - b. Are an owner, controller or employee of an organization, participating in tender
 - c. Are the close relative of the participating organization's staff or management member, or the relative of the participant, if the latter is an individual person. A close relative is the family member of the individual, a direct ascending and descending line relative, stepchild, sister or brother and also the stepchildren of parents and their stepchildren.
 - d. Worked at management position of tender process participant organization in the last three years.

- e. Are related or communicates for such relation with the participant legal entities of tender procedures with self or work interest
 - f. Are interested in and/or have financial interest in results of the tender.
4. It is prohibited for Bidders to ask the Tender Commission, its members, invited experts and consultants, or governmental organizations to take an intermediary role in the tender process, or take a direct or indirect influence in them to obtain any kind of condition which benefits them.
5. The legal entities which participate in the development of tender process are restricted from participating in the tender.
6. After completion of receiving the Tender Proposals and immediately after opening them, all Tender Commission members, invited experts and consultants, who are related to conduct the tender, are obliged to confirm that they are in compliance with abovementioned points in a written form.

Article 7: Appeal and dispute resolution conditions, related to organizing the tender

1. If Bidders consider that any law has been broken (according to this or any related legislative rules), during any step of the tender process, they can appeal the Tender Commission's action in the Ministry or Court.
2. All tender-related appeals will be disputed by Georgian legislation.
3. The dispute will not interrupt the tender process, except in event of a decision of the court.
4. The Claimant must contact the Ministry not more than one month after identifying the issue of claim or the day of decision which has caused the claim. All parties who can be affected by the issue can also participate in the complaint review process.
5. In the situations mentioned under Point 1 and 4 of this article the Ministry must make a reasonable written decision about the issue and inform the claimant within 10 days.
6. After expiration of the date indicated in Point 4 of this article, a complaint can be made only in court.
7. The complaint must include the legislative basis and arguments that the Bidder will be significantly damaged unless its requirements are satisfied. The complaint will not be reviewed if the Ministry will terminate the tender process according to this Rule.
8. Bidders can make a further complaint in court if they do not consider the Ministry's decision to be fair.

Article 8: The percentage amount calculated from lottery ticket sales and payment of Lottery Operator's quarterly payables to state budget and its details

1. The Lottery Operator is obliged to make quarterly payments that equal 8 per cent of the total lottery tickets' sales.
2. The Lottery Operator shall make a payment indicated in Point 1 of this article at the latest 15 days after end of the calendar quarter. If the date of payment is holiday, defined by Georgian legislation, the last day of payment is next working day.

Article 9: Tender participation bank guarantee (bid bond) - amount

In terms of confirming the Tender Proposal, Bidder shall provide a tender participation bank guarantee in the amount of USD 5,000,000 in total. The Bidder is restricted from transferring the amount to Ministry's account.

Article 10: Tender participation bank guarantee (bid bond) - terms of use

1. All Bidders are equally liable regarding bank guarantees.
2. The bank guarantee period must exceed Tender Proposal period by 30 days.
3. The bank guarantee confirmation shall be included in Envelope No. 1 with specific indication.
4. The Tender Commission can refuse to receive the guarantee if there is any kind of suspicion about it or about the solvency of the organization who issued the guarantee.
5. The Tender Commission must provide all guarantees back to Bidders (up to their requests) after naming the successful Bidder within 10 days.
6. If Tender Commission suspends or terminates the tender process the bank guarantees will be returned to Bidders immediately upon their requests.
7. The Tender Commission shall return guarantees to the Bidders which refused to discuss their proposals again, to prolong the validity of proposals and/or couldn't prolong the presented bank guarantee's validity.
8. If the Tender Proposal validity expired before finalizing the proposal evaluation process and Bidder refused to prolong the period, the guarantee is provided back to Bidder immediately, upon the request.
9. The Tender Commission may decide not to return the bank guarantee to the Bidder and in that case the total amount of the bank guarantee will be transferred to the state budget. This decision is made in following circumstances:
 - a. If the Bidder refuses to participate in the tender after the opening of the Tender Proposal (before the expiry of its proposals validity).
 - b. If the successful Bidder refuses to sign the agreement.
 - c. If the Bidder is disqualified from the tender due to law breaking activities.
 - d. If the successful Bidder does not pay the amount indicated in Envelope No. 2 to the state budget.
10. If the bank guarantee is not returned to the Bidder, the Bidder can appeal the issue according to Article 7 this Rule and under current Georgian legislation.

Article 11: Bank guarantee supporting the contract performance (performance bond) - amount

In terms of guaranteeing the agreement between successful Bidder and the Ministry, Bidder shall provide a contract performance bank guarantee in the amount of USD 2,800,000 in total.

Article 12: Bank guarantee supporting the contract performance (performance bond) - terms of use

1. The agreement is composed by Tender Documentation, successful Bidder's proposals details and other details.

2. The agreement signed with the successful Bidder is valid for 10 years. The abovementioned period can be extended by the decision of the Ministry of Finance of Georgia, before signing the agreement with new Bidder.
3. The bank guarantee shall cover the total agreement period and an additional 4 months after termination of the agreement. The details and terms of use of the guarantee will be specified in agreement with successful Bidder.
4. If the agreement will be terminated due to the reason which are not under the control of the successful Bidder, the Ministry is obliged to return the guarantee back.

Article 13: Conditions of the Suspension and Termination of Tender Procedures

1. The Tender Commission can suspend or terminate the tender process before signing the agreement with successful Bidder if there is any objective reason or it is needed for government or public interests.
2. The Tender Commission can suspend or terminate the tender process according to the Georgian legislation if the Bidder's provided information or documentation is false.
3. If the tender process is suspended or terminated, the Tender Commission shall inform the Bidders about it and its reasons within five calendar days. The Tender Commission is not obliged to present specific evidence or information to Bidders or return the costs incurred by Bidders during the tender.
4. If the tender process is terminated, the Tender Commission is obliged to return all documents provided by Bidders. In case of suspension of the tender process, the Tender Commission is obliged to return all documents provided by Bidders upon their request.
5. If the tender process is suspended and then the Ministry is willing to continue the process, it is obliged to continue the suspended tender procedures (If this occurs in the same year). In this event the Tender Commission will ask all Bidders to re-confirm their documentation. If all Bidders refuse to participate in the procedures of the renewed tender, Tender Commission decides to announce new tender.

Article 14: Failed tender or tender with unsuccessful result

1. The Tender will have failed if no proposals will be presented in the considered timeframe.
2. The Tender is considered to have unsuccessful result if the Bidders documentation does not comply with requirements or the successful Bidder does not meet the requirement to pay the amount indicated in Envelope No. 2.
3. If the abovementioned issues occur, the Tender Commission can decide to announce new tender.

Article 15: Other Regulations

1. All documents and information received during the tender are binded and saved during the total period of the agreement with the successful Bidder.