

Minister of Economic Development of Georgia

Order №1-1/480

April 4, 2008

Tbilisi

**On Approval of Regulations on Holding Auctions on Issuance of the User License,
Determination of Initial Price of User Licences and Settlement Procedures**

In accordance with article 18.12 and article 19.1 of the Georgian Law on Licenses and Permits I, hereby, order:

- 1. To approve the attached regulations on Holding Auctions on Issuance of the User License, Determination of Initial Price of User Licenses and Settlement Procedures.**
- 2. This order shall come into force.**

E. Sharashidze

Regulations on Holding Auctions to Issue User Licenses, Determination of Initial Price of User Licenses and Settlement Procedures

Article 1. Definition of Terms

The terms used in this order have the following definitions:

- a) Ministry – Georgian Ministry of Economic Development;
- b) Auction - open or closed auction to obtain user licenses for natural resources;
- c) Applicant (bidder) – a person that submits an application to take part in auction as defined by the Georgian legislation;
- d) Specific Price – exact amount defined by the applicant (bidder) without indication of a certain variable;
- e) Reserves of A category mineral resources – reserves of mineral resources with coefficient 1 that are explored in detail and properly prepared for use;
- f) Reserves of B category mineral resources – reserves of mineral resources, key characteristics of disposition conditions of which have been explored and their coefficient is 0,95;
- g) Reserves of C¹ category mineral resources – reserves of mineral resources, disposition conditions, form, structure and etc. of which have been approximately defined and their coefficient is 0,7;
- h) Reserves of C² category mineral resources – preliminarily evaluated reserves of mineral resources, contour of which lays within sections of geologically beneficial structures or mining rocks and their coefficient is 0,6;

- i) Reserves of P category mineral resources – forecasted reserves of mineral resources in accordance with validity level (P_1 , P_2 , P_3).

Article 2. Regulation Scope of Issuing Licenses Bodies

1. The regulations shall regulate legal relations arisen in conducting of auctions to obtain user licenses for natural resources and define rules and procedures to determine and make settlements the initial price of auction.
2. The Georgian Ministry of Economic Development (hereinafter-Ministry) shall be considered as an administrative body that issues user licenses for natural resources (hereinafter- license issuer).
3. The open or closed auction shall be conducted to obtain user license for natural resources.
4. The ministry shall make a decision on holding of closed auctions and shall announce auction based on the state and public interests in agreement with Government of Georgia.

Chapter II. Organization of Auction and Rules to Determine Initial Price of a License

Article 3. Organization of Auction

1. The purpose of organization of auction is:
 - a) To grant the right to use natural resources to an applicant that offers the highest price to the state during a trade for use of natural resources at the auction conducted;
 - b) To grant the right to use natural resources to an applicant in a closed auction in proportion to the price offered.
2. The auction shall be conducted in an open way and be accessible to all the interested parties.
3. The auction may be conducted:
 - a) In a building of a license issuer;
 - b) At any other address preliminarily defined by a license issuer.
4. In accordance with the Georgian Law on Licenses and Permits, the license issuer shall publish information on holding of action to issue user license for concrete state resources in a central media no later than one month.
5. The published information shall include the following data:
 - a) Name of a license issuer;
 - b) Specific object of the user license;
 - c) Deadlines to submit applications by a license seeker and to conduct an auction;
 - d) License conditions as defined by the legislation;
 - e) Requirements to use concrete object;
 - f) Criteria to identify a winner;
 - g) Initial price of auction;
 - i) Other data – in accordance with a license issuer.
6. To become authorized for participation in the auction thereto, the license issuer shall be presented with the following documents:
 - a) A written application indicating the type of license sought;

b) Extract from the Public Registry of the legal person of private law and sole proprietor shall be attached to the application; in case of a natural person - copies of documents confirming identification in accordance with the legislation. The legal person of public law shall attach copies of verified incorporation documents to the application;

c) Receipt of advance payment;

d) The list of documents to be additionally submitted shall be defined by the legislation in force.

7. In case of a closed auction, the documents specified in item 6 of this article shall be submitted in an open way, whilst the concrete price that should be no less than initial price determined by the Ministry – in a sealed envelope.

8. The application on participation in the auction shall be received within no less than 15 days. The deadline for receipt of applications for each concrete case shall be defined by the Ministry.

Article 4. Conditions to Participate in Auction

1. The receipt of applications to participate in the auction shall be terminated on the announced day and timing. After that the applications shall not be accepted.

2. If the deadline for submission of applications shall coincide a holiday, then a deadline shall be extended and terminated at the same time of the next working day.

3. In case of an open auction, if all the submitted documents meet the requirements, an applicant shall be provided the so-called participation ticket that is specifically produced for auction (computer printed), on the basis of which he/she shall be granted a status of the applicant .

4. To participate in an auction, a license seeker shall be required to transfer advance payment to the relevant bank account of the bank institution specified in the application published by a license issuer that should total 20% of the auction initial price determined for each case.

5. The applicant who does not win in the open auction shall be returned the paid advance payment, whilst in case of winning – the above advance payment shall be included in the auction final/offered price.

6. The advance payment shall be returned back if:

a) The applicant does not attend the open auction;

b) In case of the closed auction, the documents presented do not meet requirements defined by article 3.7 of this order;

c) If the applicant does not pay the amount offered at the auction (that is recorded in the auction report).

Article 5. Rejection to Participate in Auction

The applicant shall not be allowed to participate in the auction if:

a) he/she did not timely submit the documents necessary for participation in the auction;

b) he/she submitted falsified, incorrect or incomplete information (inter alia, receipt confirming transfer of advance payment);

c) he/she is not allowed to participate in the announced auction in accordance with the requirements defined by the legislation.

Article 6. Initial Price of License

1. The initial price of the user license at the auction shall be determined by the following formula:

$$Y = \sum_{t=1}^n \frac{(Q / n \times L)}{(1 + K)^t}$$

a) where:

a.a) Y – Initial price of user license at the auction;

a.b.) Q – Mineral resources, inter alia A,B,C₁,and C₂ category mineral resources, P category sand/gravel, and total volume of P category underground fresh water to be used for industrial purpose (except for bottling and water supply purposes) (ton, δ gram or other); where reserves of the A,B,C₁,C₂ category mineral resources (except for sand/gravel) shall be calculated on the basis of sum of multiplications of the relevant coefficients of mineral resources. In case of any (A, B, C1, C2, P) category sand/gravel, Q is a total amount of sand/gravel without multiplication by the coefficient, whilst in case of the P category underground fresh water to be used for industrial purpose (except for bottling and water supply purposes, - the total amount of fresh water.

a.c.) L – Amount of fee established for use of mineral resources (in GEL);

a.d.) K – Discount coefficient in the amount of 0, 15;

a.e) n – Validity period (years) established for use of mineral resources defined by a license;

a.f) t – Periods in accordance with years.

2. The initial price of user license for especially important natural resources shall be defined by the following formula:

$$Y = \sum_{t=1}^n \frac{(Q / n \times L)}{(1 + K)^t} \times 10$$

Note: The conditional terms used in this formula have the same meaning as those defined item 1.a of this article.

3. The initial auction price of mineral resources, information on which is not available at the legal person of public law Spatial Information Centre as well as reserves of the P category mineral resources (except for sand/gravel) and underground fresh water to be used for industrial purpose (except for bottling and water supply purposes shall be determined by the following formula:

$$Y = \sum_{t=1}^5 \frac{(Q_t / 5 \times L)}{(1+K)^t}$$

Note: The conditional terms used in this formula have the same meaning as those defined item 1.a of this article, whilst Q^1 –total reserves of natural resources specified by Georgian Law on Fee for Use of Natural Resources that are defined by 200 units in tons and m ; in grams, kilograms, carats and k. calories– by 200 000 units. If the price calculated by this formula is less than GEL 10,000, the initial auction price shall be GEL 10 000.

4. The initial auction price for hunting reserve shall be defined by GEL 10 per each ha.
5. The initial auction price for each concrete case shall be defined by the Minister in accordance with the initial auction price determined by this article, if not otherwise defined by the government decision.

Chapter III. Procedure to Conduct Auction

Article 7. Procedure for Conducting the Open Auction

1. The open auction shall be conducted publicly.
2. The open auction shall be organized and conducted by the relevant structural unit of license issuer (hereinafter – auctioneer).
3. The applicant shall enter an auction room before the auction starts, present a participation ticket and take a special board that coincides with the number indicated in his/her ticket.
4. The auctioneer shall compare a number of the above boards with a number of applications submitted to check a number of applicant s attending this trade.
5. During the open auction the auctioneer shall publicly announce information on resources to be traded (including their initial price) prior to start of trade. The trade at the open auction shall be considered as started on the moment the initial auction price is announced fixed by indication of the relevant timing.
6. The applicant intending to start the trade, shall raise his/her board to be well seen by the auctioneer and announce his/her price. If a new price is announced before this price is repeated for three times, the auctioneer shall fix it and ask applicant s to continue trade till one of the applicant s announces the highest price. The applicant with the highest offered price will become the highest after it is called three times.
7. The trade at auction shall be conducted by price steps that should be no more than 10% of initial price.
8. The price step is an amount by which the applicant may increase the price announced by other applicant s. It shall not be allowed to increase prices by less amount than the price step.

Article 8. Procedure for Conducting the Closed Auction

1. The closed auction shall be publicly conducted.

2. The closed auction shall be organized and conducted by the relevant structural unit of the Ministry.
3. The Ministry shall review applications submitted by an applicant based on the price offered.
4. The Ministry shall open envelopes on the day and time defined by the Ministry.
5. The applicants and their authorized representatives have the right to attend only the process of opening of envelopes.
6. The Ministry shall review applications submitted by participants without their attendance and then make a decision on allocation of the defined quotes of natural resources.
7. As a rule, the Ministry shall announce a decision on results of the closed auction on the day the envelopes are opened. The Ministry shall have a right to announce the above results no later than 3 working days following opening of the envelope.
8. The allocation of quotes shall be done for each applicant proportionally to the prices offered in accordance with the following formula:

$$Y_i = \frac{V_i}{V_1 + V_2 + \dots + V_n} \times Q$$

Where:

- a.a) Y_i – volume of natural resources to be extracted by each applicant ; ($i=1, 2, 3 \dots n$);
- a.b) V_i – price offered by each applicant ;
- a.c) n – number of applicant s;
- a.d) Q – total volume of natural resources.

9. If the price offered by the applicant is less than the initial price defined by the Ministry, the application submitted by him/her shall be reviewed.

Article 9. Annulment of Auction

1. The open auction shall be viewed as annulled if:
 - a) No applications were submitted to the license issuer to participate in the auction;
 - b) None of the applicant s attended the auction;
 - c) None of the applicant s attending the auction participated in trade;
 - d) No price higher than the initial price was offered;
 - e) In cases specified in article 11.1 and item 2.a of this regulation, if the winner applicant does not pay the price offered at the auction within the defined timeframe (that is indicated in the auction minutes);
 - f) Other requirements defined by the legislation were violated.
2. The closed auction shall be viewed as annulled if
 - a) The number of submitted applications on participation in the auction was not in compliance with the auction requirements defined by the Ministry;
 - b) if none of the applications submitted by applicant s is in compliance with requirements determined by article 3.7;
 - c) Other requirements defined by the legislation were violated.

Article 10. Procedure to Register Auction Results

1. The auction minutes describing trade process and results shall be drafted within 3 days since completion of the auction.
2. The minutes shall be signed:
 - a) In case of the open auction, a winner and in case of the closed auction- all participants of the auction;
 - b) The Head of the relevant structural unit of the license issuer and secretary (the person authorized to draft the above minutes).
3. In case of rejection to sign the minutes on results of the auction, the applicant shall be deprived of the status of winner and receipt of the quote allocated for him/her.
4. In case of annulment of the auction, the relevant minutes stating annulment of the auction shall be immediately drafted and signed by the Head of the relevant structural unit of the license issuer and secretary as well as the applicants who attended the auction but did not participate in the public trade (if applicable).

Article 11. Settlement Rule

1. Within 15 days after completion of the Auction Minutes, the applicant shall be required to transfer the amount that corresponds to the final/offered price announced at the auction to the relevant bank account of the specified banking institution, except for case determined by item 2 of this article.
2. If not otherwise defined by the government decision, the following settlement rules are determined in accordance with the final/offered price stated for each object:
 - a) In case if the final offered price registered at the auction ranges from GEL 50 000 to GEL 150 000, the above amount shall be transferred, in cash or via non-cash settlement, to the relevant bank account of the specified bank institution by the applicant no later than 45 days following drafting of the auction minutes;
 - b) In case if the final offered price registered at the auction ranges from GEL 150 000 to GEL 300 000, the above amount shall be transferred in cash or via non-cash settlement, to the relevant bank account of the specified bank institution by the applicant on a monthly basis within 3 months proportionally to the payable amount;
 - c) In case if the final offered price registered at the auction ranges from GEL 300 000 to GEL 500 000 the above amount shall be transferred in cash or via non-cash settlement, to the relevant bank account of the specified bank institution by the applicant on a monthly basis within 6 months proportionally to the payable amount;
 - d) In case if the final offered price registered at the auction ranges from GEL 500 000 to GEL 1 000 000 the above amount shall be transferred in cash or via non-cash settlement, to the relevant bank account of the specified bank institution by the applicant on a monthly basis within 9 months proportionally to the payable amount;
 - e) In case if the final offered price registered at the auction ranges from GEL 1 000 000 to GEL 5 000 000, the above amount shall be transferred in cash or via non-cash settlement, to the relevant bank account of the specified bank institution by the applicant on a monthly basis within 12 months proportionally to the payable amount;
 - f) In case if the final offered price registered at the auction ranges from GEL 5 000 000 to GEL 10 000 000, the above amount shall be transferred in cash or via non-cash settlement, to the relevant bank account of the specified bank institution by the applicant on a monthly basis within 18 months proportionally to the payable amount;

- g) In case if the final offered price registered at the auction ranges from GEL 10 000 000 to GEL 20 000 000, the above amount shall be transferred in cash or via non-cash settlement, to the relevant bank account of the specified bank institution by the applicant on a monthly basis within 24 months proportionally to the payable amount;
- i) In case if the final offered price registered at the auction is more than GEL 20 000 000, the Minister shall submit to the Government of Georgia a payment schedule in accordance to the requirements of the applicant . If supported by the Government, the Minister shall approve the relevant payment schedule.
3. If in cases defined by items 1 and 2 of this article, the settlement deadline coincides with the non-working day, the above deadline shall be extended till the end of the next working day.
4. The applicant shall be required to submit a receipt of the document confirming payment of the final/offered price to the Ministry within 7 days following expiration of the payment deadline determined by this article.
5. Prior to payment of the final/offered price registered at the auction, in case of disposal of the whole license (except for item 1 of this article), a responsibility to pay this amount shall be assumed by a license receiver in accordance with the settlement rule defined by item 2 of this article.
6. Prior to payment of the final/offered price registered at the auction, in case of partial disposal of the license (except for item 1 of this article), a responsibility to pay this amount shall be assumed by a license receiver (except for license receivers for use of concrete objects defined by the Ministry) proportionally to the part of the license obtained in accordance with the settlement rule defined by item 2 of this article.
7. In case specified in item 6 of this article if the proportionally paid amount does not exceed GEL 50,000, the applicant and/or license receiver shall be liable to pay the above amount prior to transfer/receipt of the license.
8. In case defined by item 6 of this article when a period of payment for proportionally paid payment specified by item 2 of this article is expired, an applicant and/or license seeker shall be required to pay the above amount prior to issuance/receipt of a license.
9. In cases specified in items 5 and 6 of this article, period of payment shall start upon completion of auction report.
10. In case if a license is issued by the open auction and an applicant or license seeker violates settlement rules defined by this article, the decision on issuance or transfer of a license made by the license issuer shall considered as void and the user right shall be subject to issuance of license by auction.
11. In case if a license is issued by the closed auction and an applicant or license seeker violates settlement rules defined by this article, the decision on issuance or transfer of a license made by the license issuer shall considered as void and the user right determined by a license shall be distributed in accordance with article 8.8.
12. The requirements and procedures defined for cases specified by items 3, 4, 5, 6, 7, 8, 9, 10 and 11 of this article shall apply in case of disposal of the license or part of the license by a license holder.
13. The license issuer shall apply to the Ministry of finance of Georgia on a monthly basis to obtain information on the funds transferred to the state budget for issuance of licenses in accordance with this article.