

Draft

Decree # [...]
of the Government of Georgia

[...], 202-

Tbilisi

**On the Necessary Measures to Be Taken in Order to Achieve the Goal of Sustainable
Development in Public Procurement**

Article 1

In accordance with Paragraph 14 of Article 52 of the Law of Georgia “On Public Procurement” the attached shall be approved:

- a) Rules and Conditions for contracting authorities to take into account, in the terms of procurement, the characteristics necessary for sustainable development, as well as the provisions and rules for indication these characteristics;
- b) CPV codes of the procurement object for that it is mandatory to take account of sustainable development characteristics (Annex N1 - Prioritized Products);
- c) The methodology of calculating the total life-cycle cost for the electro energy-consuming procurement object (goods) (Annex N2);
- d) Sustainability conditions that may be envisaged in the procurement documentation (Annex N3);

Article 2

The decree shall enter into force from – of 202 ----.

Rules and Conditions for contracting authorities to take into account, in the terms of procurement, the characteristics necessary for sustainable development, as well as the provisions and rules for indication these characteristics

Chapter I. General questions

1. This Decree shall determine:
 - 1.1. the principles, requirements and procedures for the implementation of Sustainable Public Procurement (hereinafter - "SPP"), as well as the regulations for performance of a public procurement contract (hereinafter - "procurement contract") and respective control procedures while conducting SPP;
 - 1.2. CPV codes of the procurement objects for that it is mandatory to take account of the characteristics of sustainable development (Annex N1 - Prioritized Products);
 - 1.3. The methodology of calculating the total life-cycle cost for the electro energy-consuming products (goods) (Annex 2);
 - 1.4. Sustainability conditions that may be envisaged in the procurement documentation (Annex 3).
2. During the implementation of public procurement when prioritized products are procured, in order to observe and fulfill the principle of sustainability, contracting authorities shall be obliged to apply and indicate in the procurement documentation, the characteristics and criteria of sustainable procurement defined by this Decree.
3. The objective of application of SPP is to reduce the environmental impact of procurement objects procured throughout their life-cycle, while promoting the development of environmentally friendly procurement objects on the market and increasing green industries or competitiveness within local economy. Within the frames of SPP, along with meeting the needs of contracting authorities, respective positive social, ethical and economic outcomes are also achieved while carrying out public procurement procedures.
4. LEPL State Procurement Agency (hereinafter - "the Agency") shall be the authority responsible for studying and analyzing the situation in the field of SPP in Georgia. The Agency shall provide activities in order to eliminate existing deficiencies in the sphere of SPP and submit suggestions to the Government of Georgia to make relevant decisions in case resolution of the issue is beyond its competence.

Chapter. II. Order of applying SPP

5. The following SPP principles shall be observed in the public procurement process:
 - 5.1. environmentally friendly procurement - environmental and human health considerations should be a generally accepted part of public procurement practices alongside the safety, price and accessibility of a procurement object, and performance of respective commitments;
 - 5.2. prevention of damage - environmental considerations must be taken into account in all the stages of the procurement process, seeking to effectively prevent or reduce potential risks to the environment and human health;
 - 5.3. life-cycle approach - the environmental impact of a procurement object must be considered throughout its life cycle, from the origin, production, and supply of a procurement object. Furthermore, all the consecutive and/or interconnected stages must be taken into account, including research and development to be carried out, production, trading and its conditions, transportation and maintenance throughout the whole period of existence of the procurement object, from the moment of acquisition of raw material or generation of resources at disposal, through obtaining allowance and ending with application of such allowance;
 - 5.4. comparison of environmental impacts - the most significant impacts should be taken into account, based on the magnitude, reversibility, geographical scale and other factors of the damage to the environment and human health;
 - 5.5. information regarding environmental protection measures - the requirements and criteria used in public procurement process to reduce the environmental impact of procurement objects must be precisely formulated and objectively measurable. Furthermore, appropriate conformity verification methods should also be taken into account in these requirements and criteria;
 - 5.6. commitment to promote adherence to internationally agreed standards, including social, environmental and labor law norms established by Georgian legislation as well as determined by international treaties of Georgia.
6. For the procurement of procurement objects that are not included in Annex 1 to this Decree:

a) SPP principles may be applied by integrating the eco-label and, where applicable, the environmental management standard as evidence of conformity of the procurement objects with the requirements specified in procurement documentation, provided that such requirements are directly linked to the subject-matter of the contract and are proportionate to its value and its objectives;

b) If the contracting authority wants to take into account the life-cycle costing approach when procuring such procurement objects, the contracting authority is entitled to also use the formula indicated in the Annex N2, for electro energy consuming procurement objects, provided that conditions specified in paragraphs 10.1 and 10.2 exist and such requirements are directly linked to the subject-matter of the contract and are proportionate to its value and its objectives.

7. Besides when procuring procurement objects set by the provisions of Annex I of this decree and Paragraph 6 of this Decree, other SPP requirements and criteria may also be used in public procurement process, if they are applicable to the relevant group of procurement objects and ensure adherence to the general principles defined by the Law of Georgia “On Public Procurement” or according thereto.
8. In applying the SPP requirements and criteria specified in Annex 1 to this Decree, contracting authorities are recommended to use methodic directives and recommendations (if any) developed by the Agency with the purpose to improve public procurement practices.
9. When setting the requirements and criteria for SPP, a method for verifying their compliance shall be clearly stated in procurement documentation. Contracting authorities shall indicate in procurement documentation what type of attestations of conformity economic operators may submit.
10. For the groups of electro energy- consuming procurement objects included in Annex 1 to this Decree, a contracting authority may use the calculation of life-cycle costs in order to determine the most economically advantageous tender, where the following conditions exist:
 - 10.1. Life-cycle costs related to the purchase and use of the relevant product are expressed in monetary terms and calculated using the methodology referred to in Annex 2 to this Decree;
 - 10.2. the procurement documentation specifies the data necessary for the calculation of the life-cycle costs and determines that the economic operator shall include in the procurement process the results of the life-cycle cost calculations of the relevant product, through the life-cycle cost calculator available on the official website of the Agency.

Chapter. III. SPP implementation and evaluation

11. The Agency shall:

- 11.1. be entitled to develop guidelines and recommendations for the introduction and implementation of newly established SPP, as well as methodological guidelines and recommendations for sustainable procurement of the prioritized products (goods), and ensure their availability on the official website of the Agency. The guidelines and recommendations, as well as methodological guidelines and recommendations for prioritized products (goods) shall indicate the wording of the SPP requirements and criteria corresponding to each group of the prioritized procurement objects (goods), also methods for verifying the compliance of the requirements and criteria, as well as other necessary information for the application of SPP;
- 11.2. be entitled to submit suggestions to the Government in order to develop and, if necessary, update the methodology for the calculation of life-cycle costs for electro energy- consuming goods;
- 11.3. be entitled to encourage contracting authorities to consider critical necessity when planning procurement, to take account of the need for procurement by reducing consumption of specific object(s) and/or by avoiding use of procurement object(s) with a view to avoiding or reducing energy consumption;
- 11.4. be entitled to encourage contacting authorities to revise specifications of a procurement object in order to improve sustainable outcomes and/or to identify alternatives to buying such as reusing, hiring or sharing procurement object.
- 11.5. be obliged to aggregate the data regarding the prioritized procurement objects purchased according to the SPP criteria separately for state administration institutions and/or municipalities (local self-government bodies), as well as for state and/or municipal enterprises;
- 11.6. be entitled to create and maintain a separate SPP section on its website with the necessary information, as well as ensure periodic review and/or updating of this information with a view of efficient implementation of sustainable procurements;
- 11.7. be entitled to provide SPP-related trainings and provide methodological support;
- 11.8. be obliged to ensure the annual assessment of the implementation of SPP;
- 11.9. be obliged to determine the share of SPP in financial terms in the total amount of public procurement;

- 11.10. be obliged to prepare and submit to the Government of Georgia an informative report on the implementation of SPP once a year;
- 11.11. be obliged to participate in the periodical data collection exercises (if any).

Chapter. IV. SPP Monitoring and Control

12. A person/entity involved in the public procurement shall be obliged to comply with applicable norms and regulations related to environmental and social responsibility. Where the regulatory provisions determined by the legislation of Georgia are more stringent than the rules and provisions defined under this Decree, a person/entity referred to in this Paragraph shall apply the more stringent provisions. All sustainability commitments, if any, must be written into the respective public procurement contract to ensure that the economic operator is contractually bound to deliver them.
13. Contracting authorities shall be obliged to monitor and evaluate adherence of economic operators to the SPP requirements through various methods, such as, but not limited to, the review of documented evidence or through independent specialist audits (if deemed relevant).
14. Control over the compliance of the procurement objects to be supplied with the SPP criteria specified in the law or the terms of procurement shall be performed periodically or at the *ad hoc* request of the contracting authority. The control is performed in the following order:
 - 14.1. An economic operator shall, at the request of the of a contracting authority, present the required documents, as well as provide an authorized person with all the information related to the subject-matter of the procurement contract;
 - 14.2. A contracting authority shall be obliged to examine the documents submitted by an economic operator and/or other information related to the subject-matter of the procurement contract;
 - 14.3. A contracting authority shall be entitled to organize the taking of samples;
 - 14.4. A representative of a contracting authority and a representative of an economic operator shall participate in the sampling. If a representative of an economic operator refuses to participate in the process, samples shall be taken without his/her presence;
 - 14.5. A report regarding the taking of samples shall be drawn up in accordance with the requirements specified in normative acts (if any) and/or in the procurement documentation, as well as according to the procedures specified by the contracting authority.
15. Any violations of the requirements and standards herein may lead to the termination of the contract.

16. Contracting authorities are required to prepare and submit to the Agency information on the implementation of SPP no later than November 1 of each year.

ANNEX I

CPV codes of the procurement object for that it is mandatory to take account of the characteristics of sustainable development

Nº	The common procurement vocabulary (CPV) code	Name of the procurement object
1	30125100	Toner cartridges
2	30192113	Ink cartridges
3	30232100	Printers and plotters
4	39800000	Cleaning and polishing products

ANNEX II

The methodology of calculating the total life-cycle cost for the electro energy-consuming procurement object (goods)

1. The annual life-cycle costs of an electro energy-consuming procurement object - a product in relation to electro energy consumption shall be calculated by adding acquisition cost of the product (I) to the exploitation cost of the product (L) and dividing it by the total exploitation time of the product (A).
2. A contracting authority shall determine:
 - 2.1. the electricity price to be used in the calculation (GEL/ kWh) and the annual increase in the electricity price (%);
 - 2.2. the estimated average use of the light bulb (hours per year);
 - 2.3. total time of use of computers, monitors and printing equipment (years).
3. The exploitation costs (L) shall be calculated using the following formula:
$$L = ((B \times C) \times (((1)^A - 1) / (1 - 1))): (1)^A,$$
where
 - L – stands for exploitation costs;
 - A – stands for service life of the product (in years);¹
 - B – stands for electro energy consumption per year (kWh per year);
 - C – stands for electricity price (GEL/ kWh).
4. The service life of light bulbs (A) shall be calculated by dividing the total service life of light bulb (hours) by the average light bulb usage per year (hours per year) and rounded to the nearest whole number;
5. The electro energy consumption (kWh) of light bulbs per year shall be calculated by multiplying the power of light bulb (in watts) by the average light bulb usage per year (hours per year) and dividing by 1000;
6. For computers, printing equipment, and other equipment that have ENERGY STAR or European Union energy efficient label, annual electro energy consumption data (B) shall be obtained from the following certification documents:
 - 6.1. For computers, monitors, and printing equipment that meet the latest² ENERGY STAR energy efficiency criteria, Typical Energy Consumption (TEC) shall be used;

¹ If the service period is 1 year or less, contracting authority shall mark 1.

² To ensure the availability of products for the tendering procedure, during the first year since the publication of a new version of the ENERGY STAR, the new and the previous version of the ENERGY STAR is advisable to be allowed by the contracting authority.

6.2. For monitors that meet the latest³ ENERGY STAR energy efficiency criteria and for which no Typical Energy Consumption (TEC) is available, the annual electro energy consumption (B) shall be calculated using the following formula:

$$B = ((D \times G): 1000) + ((E \times H): 1000) + ((F \times N): 1000), \text{ where}$$

B – stands for annual electro energy consumption;

D - stands for electro energy consumption in operating mode (W);

E - stands for electro energy consumption in sleep mode (W);

F - stands for electro energy consumption in off mode (W);

G - stands for average duration of monitor use per year in operating mode (hours per year);

H - stands for average duration of monitor use per year in sleep mode (hours per year);

N - stands for average duration of monitor use per year in off mode (hours per year);

6.3. For printing equipment for which Typical Energy Consumption (TEC) is not available, the annual electro energy consumption (B) shall be calculated using the following formula:

$$B = ((E \times H): 1000) + ((F \times N): 1000), \text{ where}$$

B - stands for annual electro energy consumption;

E - stands for electro energy consumption in sleep mode (W);

F - stands for electro energy consumption in off mode (W);

H - stands for average duration of monitor use per year in sleep mode (hours per year);

N - stands for average annual usage time of the monitor in off mode (hours per year).

7. The life-cycle costing calculator available on the website of the State Procurement Agency may be used to calculate the total life-cycle cost of the goods.

³ To ensure the availability of products for the tendering procedure, during the first year since the publication of a new version of the ENERGY STAR, the new and the previous version of the ENERGY STAR is advisable to be allowed by the contracting authority.

ANNEX III

Sustainability conditions that may be envisaged in the procurement documentation

In addition to the general provisions of the procurement contract and the SPP technical and specific requirements set forth in the terms of public procurement, considering the peculiarities of the procurement object, when and where it is appropriate, public procurement contract might have additional sustainable public procurement requirements, including:

a) General Sustainability Terms, which with other things include:

a.a) Economic operator's commitment to sustainability, including provision that an economic operator shall demonstrate its commitment to embed sustainability into its own operations taking into account social, environmental, economic and/or other considerations;

a.b) Considering sustainability principles in contract execution, including provision, that an economic operator shall include a practical plan for implementing sustainable practices in the execution of the procurement contract.

b) In the sphere of human rights protection:

b.a) Provisions related to protection of human rights, including provision that economic operators are expected to support and respect the protection of internationally proclaimed human rights and to ensure that they are not complicit in human rights abuses;

b.b) Provisions related to prohibition of discrimination, including provision that economic operators are expected to ensure equality of opportunity and treatment in respect of employment and occupation without discrimination on grounds of race, color, sex, religion, political opinion, national extraction or social origin and such other grounds that may be recognized as discriminative under Georgian law or the national law of the country or countries where the performance of a contract takes place;

b.c.) In the direction of gender equality, including provision that economic operators will reserve a minimum portion of contracted labor opportunities for underrepresented gender (they will employ definite number of the representatives of underrepresented gender) while performing the commitments envisaged by the procurement contract.

c) In the sphere of protecting Labor Law Norms (Standards):

c.a) Provisions related to prohibition of forced, bonded, indentured labor, including provision that economic operators are expected to prohibit forced or compulsory labor in all its forms;

c.b) Provisions related to prohibition of adolescent (child) labor, including provision that in accordance with the Labor Code of Georgia, economic operators shall not employ:

c.b.a) children below 14 years of age or, if the age limit specified in this Sub-Paragraph is higher in the country or countries where the performance of a contract takes place, economic operators shall not employ adolescents taking account of the respective age limit;

c.b.b) adolescents under the age of 18 for work that, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, morals or physical and mental development of such persons.

c.c.) Provisions related to the freedom of association and effective recognition of the right to collective bargaining, including provision that economic operators are expected to consider the circumstance that workers shall, without any exception, be entitled to organize and defend their interests through associations (among them, professional unions) or bargain collectively (conclude collective contracts and agreements).

c.d) Provisions related to the safe and healthy working environment, including provision that economic operators shall be obliged to ensure, that:

c.d.a) the workplaces (site, area), machinery, equipment and working processes under their control are safe to the maximum extent possible and without risk to health of the workers;

c.d.b) the chemical, physical and biological substances and agents to be used by the workers are without risk to their health when the appropriate measures of protection are taken;

c.d.c) where necessary, adequate protective clothing and protective equipment are provided to the workers.

c.e) Provisions related to wages, working hours, benefits and terms of employment, including provision that, within the frames of a procurement contract, economic operators shall be obliged to ensure the payment of wages to employees for the performance of the commitments assumed by the contract; payments shall be made at least on monthly bases and economic operators shall keep an appropriate record of such payments. Deviation from this payment rule shall be permitted only under conditions and to the extent prescribed by the applicable law or collective agreement, and economic operators shall be obliged to inform the workers concerned of such deviations. The wages, hours of works and other conditions of work provided by economic operators should not be less favorable than the best conditions prevailing locally and might be contained in:

c.e.a) collective agreements covering a substantial proportion of employers and workers;

c.e.b) court judgements;

c.e.c) the legislation of country or countries where the performance of a contract takes place.

d) In the sphere of Environmental Protection:

d.a.) Provisions related to protection of the environment, including provision, that:

d.a.a) economic operators shall be obliged to comply with the environmental norms applicable in the country while performing their activities in any form. Economic operators shall, whenever possible, support a precautionary approach to environmental matters, undertake initiatives to resolve environmental issues (to promote greater environmental responsibility) and encourage the diffusion of environmentally friendly technologies implementing sound life-cycle practices;

d.a.b) economic operators shall be obliged to comply with the environmental norms applicable in the country while performing their activities in any form, to minimize the potential negative impact of procurement objects on the environment. Economic operators shall support a precautionary approach to environmental challenges.

d.b) Provisions related to the impact on climate and air quality, including provision, that:

d.b.a) economic operators shall be obliged to define and control as required prior to discharge or disposal air emissions of volatile chemicals, aerosols, corrosives, particulates, ozone depleting chemicals and combustion by-products generated from their operations;

d.b.b) economic operators shall aim to mitigate impacts on climate change, including the following measures:

d.b.b.a) mitigating greenhouse gas emissions and other air emissions that harm the environment;

d.b.b.b) continuously improving energy management and efficiency (e.g. using/supplying products that at least meet recognized energy efficiency standards);

d.b.b.c) selecting energy sources responsibly and taking appropriate steps towards adopting lower carbon intensity and renewable energy sources;

d.b.b.d) using low or zero emission transport modes.

d.c) Provisions related to waste, reuse and recycling, including following provisions according to which:

d.c.a) in the waste management field – economic operators shall ensure that their formal plan to properly manage any waste is implemented at every stage of the execution of the procurement contract;

d.c.b) for the take-back provision, economic operators shall execute their takeback program to collect and further recycle products at the end of their useful life.

d.d) Provisions related to the use of chemicals, including provision according to which:

d.d.a) economic operators shall not use products containing toxic chemicals or other substances harmful to human health or the natural environment.

d.e) Provision related to the conservation of species and natural habitats, including provisions that economic operator:

d.e.a) shall ensure that raw materials of natural origin have been sourced legally, in accordance with the Georgian legislation and undertaken obligations defined by international agreements of Georgia;

d.e.b) shall not supply or use products or packaging that make use of any fur, skin, feathers, food or food ingredients of plant or animal origin (including fish) of any species specified in the Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES) Appendices and the International Union for Conservation of Nature (IUCN) Red List of Threatened Species.