

## **On approval of the Rules for establishment of exemptions from national treatment in the course of public procurement**

### *Unofficial translation*

Decree of the Government of the Republic of Kazakhstan dated December 31, 2015 No. 1178

### *Unofficial translation*

In accordance with paragraph 3 of article 14 of the Law of the Republic of Kazakhstan dated December 4, 2015 “On Public Procurement”, the Government of the Republic of Kazakhstan **HEREBY DECREES:**

1. To approve the attached Rules for establishment of exemptions from national treatment in the course of public procurement.

2. This decree shall be put into effect from January 1, 2016 and shall be subject to official publication.

*Prime Minister  
of the Republic of Kazakhstan*

*K. Massimov*

Approved  
by decree no.1178 of the  
Government  
of the Republic of Kazakhstan  
dated December 31, 2015

## **Rules for establishment of exemptions from national treatment in the course of public procurement**

### **1. General provisions**

1. These Rules have been developed in accordance with article 14 of the Law of the Republic of Kazakhstan dated December 4, 2015 “On Public Procurement” (hereinafter referred to as the Law).

2. These Rules shall determine the procedure of establishment of exemptions from the national treatment in the course of public procurement.

3. The following definitions shall be used for the purposes of these Rules:

1) exemption from national treatment in the course of the public procurement is the restriction of access of potential suppliers (contractors, co-contractors) of other member states to participating in public procurement procedures of specific goods (works, services) or restriction of an access to public procurement carried out in certain sectors of the economy, established by an act of the Government of one member state of the Eurasian Economic Union;

2) the authorized body in public procurement (hereinafter referred to as the authorized body) - a state body carrying out management in public procurement орган.

## **2. Procedure of establishment of exemptions from national treatment in the course of public procurement**

4. The Government of the Republic of Kazakhstan shall have the right to establish exemptions from the national regime in the implementation of public procurement for a period of no more than two years.

**Footnote. Paragraph 4 - in the wording of the Resolution of the Government of the Republic of Kazakhstan dated 06.05.2019 No. 260 (shall enter into force from the day of its first official publication).**

5. Exemptions from the national regime in public procurement can be established for:

- 1) protection of the foundations of the constitutional system;
- 2) ensuring the country's defense and state security;
- 3) protection of the domestic market;
- 4) the development of the national economy;
- 5) support of domestic producers.

**Footnote. Paragraph 5 - in the wording of the resolution of the Government of the Republic of Kazakhstan dated 06.05.2019 No. 260 (shall enter into force from the day of its first official publication).**

6. The state body in case of the need to establish the exemption from the national treatment in the course of public procurement within its competence shall develop a draft decree of the Government of the Republic of Kazakhstan, establishing the exemption from the national treatment (hereinafter referred to as the draft decree).

7. The authorized body shall coordinate the draft decree, developed by the state body - developer before its submission to the Government, after its coordination with all concerned state bodies.

8. The state body - developer of the draft decree establishing the exemption from the national treatment in the course of public procurement, when submitting to the Office of the Prime Minister of the Republic of Kazakhstan and coordination with other state bodies, shall provide:

- 1) a draft decree;
- 2) justification of the need to establish the exemption from the national treatment in the course of public procurement in the form according to annex 1 to these Rules:

**3) excluded by the resolution of the Government of the Republic of Kazakhstan dated 06.05.2019 No. 260 (shall enter into force from the date of its first official publication);**

4) other documents (materials) and information that may be the grounds for the need to establish the exemption from the national treatment in execution of state procurement, including the opinion of an authorized body on meeting by the regulating state bodies of the

procedures of analysis of regulatory effect, if in relation of such draft decree a procedure of analysis of regulatory effect has been provided;

5) list of indicators and information provided for justification of adoption of a draft decree in form according to annex 2 to these Rules.

9. State body-developer, after coordination of a draft decree with state bodies shall submit it to the Government of the Republic of Kazakhstan in accordance with the procedure, established by the Regulations of the Government of the Republic of Kazakhstan, approved by decree no.1300 of the Government of the Republic of Kazakhstan dated December 10, 2002.

**Footnote. Paragraph 8 as amended by the resolution of the Government of the Republic of Kazakhstan dated 06.05.2019 No. 260 (shall enter into force from the day of its first official publication).**

### **3. Procedure of notification on the establishment of exemptions from national treatment**

9. Authorized body in advance but no later than fifteen calendar days prior to the date of adoption of the act on the establishment of exemptions shall send a notice and a list of documents stipulated by paragraph 8 of these Rules, to the Eurasian Economic Commission, and to each of the state-members of the Eurasian Economic Union.

10. If the Eurasian Economic Commission requests from the authorized body for other information, not stipulated by paragraph 8 of these Rules, the authorized body shall send the mentioned request within one working days to the state body-developer.

11. The state body-developer shall consider the request, specified in paragraph 10 of these Rules, and shall provide the corresponding information within three working days from the date of receipt of such request from the authorized body.

12. The authorized body shall meet the request, specified in paragraph 10 of these Rules within the period not exceeding one working day.

Annex 1  
to the Rules for establishment  
of exemptions from national  
treatment in the course  
of public procurement

#### **Justification of the need to adopt a regulatory legal act establishing the exemption from the national treatment in the course of public procurement**

№ п\п	List of information that must be provided in the justification	Information of the state body - developer
1.	The state body - developer	
2.	Justification of the need to adopt the project	
3.	Justification of case exclusivity	

4.	Justification of the need to establish special aspects of public procurement related to the need to observe the confidentiality of information about potential suppliers until the end of public procurement (if the adopted act establishes such special aspects)	
5.	Justification of the need for public procurement from one source by directly concluding a contract (if the adopted act determines the sole supplier)	
6.	Excluded by the resolution of the Government of the Republic of Kazakhstan dated 06.05.2019 No. 260 (shall enter into force from the day of its first official publication).	
7.	Specific goals, deadlines for expected results and expected effectiveness of project adoption	
8.	Other documents (materials) and information that may be a justification of the need to establish exemptions from the national treatment, including the opinion of the authorized body on meeting by the regulating state bodies of the procedures of analysis of the regulatory impact, in relation of such draft decree, the procedure of the analysis of the regulatory impact has been provided	

First head  
of the state body \_\_\_\_\_ / \_\_\_\_\_  
signature, clarification of signature  
Date \_\_\_\_\_

Annex 2  
to the Rules for establishment  
of exemptions from national  
treatment in the course  
of public procurement

## LIST

### of indicators and data submitted for justification of the need to adopt a draft decree

1. The volume of consumption of goods (work, services)\*
2. The volumes of import and export of goods (works, services) in respect of the state member and when necessary of the third countries\*
3. The volume of state procurement of goods (works, services)\*
4. The volume of production of goods (performance of works, rendering a service)\*\*

5. Utilization of capacity of manufacturers of goods\*\*
6. Profitability of production of goods \*\*
7. The cost of the production of a unit of goods (work, services)\*\*
8. The average price level of producers of goods (work, services)\*\*
9. The volume of investments\*\*
10. Specific characteristics of the goods (works, services), allowing to make a conclusion about the admissibility and the need of exemption from the national treatment

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\* The value of the indicator is presented in the whole for the Republic of Kazakhstan.

\*\* \* The value of the indicator is presented with a breakdown by manufacturers of the Republic of Kazakhstan.

Notice. Indicators and information shall be presented for the preceding three-year period and, when necessary, shall be confirmed by the data of statistical reporting or a balance sheet, as well as the forward-looking indicators for the current period shall be presented.

In the absence of data on indicators and information, the reasons for the absence of such data shall be specified.