

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

Invalidated Unofficial translation

Decree of the Government of the Republic of Kazakhstan dated December 31, 2015 № 1178. The Resolution became invalid by Resolution of the Government of the Republic of Kazakhstan dated 15.10.2024 № 853

Unofficial translation

Footnote The Resolution became invalid by Resolution of the Government of the Republic of Kazakhstan dated 15.10.2024 № 853 (effective after the day of its first official publication, but not earlier than 01.01.2025).

In accordance with paragraph 3 of Article 14 of the Law of the Republic of Kazakhstan "On Public Procurement", the Government of the Republic of Kazakhstan **DECIDES:**

Footnote. The preamble is in the wording of the resolution of the Government of the Republic of Kazakhstan dated 17.03.2023 № 236 (effective ten calendar days after the date of its first official publication).

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 №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 for the establishment of exemptions from the national regime in the conduct of public procurement (hereinafter – the Rules) have been developed in accordance with Article 14 of the Law of the Republic of Kazakhstan "On Public Procurement" (hereinafter – the Law).

Footnote. Paragraph 1 - as amended by the resolution of the Government of the Republic of Kazakhstan dated 17.03.2023 № 236 (effective ten calendar days after the date of its first official publication).

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 № 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 № 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 resolution establishing an exemption from the national regime in the implementation of public procurement, when submitted to the Apparatus of the Government of the Republic of Kazakhstan and coordinated with other state bodies, shall submit:

1) draft resolution;

2) justification of the need to establish an exemption from the national regime in the implementation of public procurement in accordance with Annex 1 to these Rules:

3) **excluded by the resolution of the Government of the Republic of Kazakhstan dated 06.05.2019 № 260 (effective from the date of its first official publication);**

4) other documents (materials) and information that may justify the need to establish an exemption from the national regime in the implementation of public procurement;

5) a list of indicators and information provided to justify the need to adopt a draft resolution in the form in accordance with Annex 2 to these Rules.

Footnote. Paragraph 8 as amended by the resolutions of the Government of the Republic of Kazakhstan dated 06.05.2019 № 260 (effective from the date of its first official publication); dated 17.03.2023 № 236 (effective ten calendar days after the date of its first official publication); dated 29.03.2024 № 240 (effective ten calendar days after the day of its first official publication).

9. The state body-developer, after agreeing on the draft resolution with the state bodies, submits 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 the resolution of the Government of the Republic of Kazakhstan dated January 6, 2023 № 10.

Footnote. Paragraph 9 - as amended by the resolution of the Government of the Republic of Kazakhstan dated 17.03.2023 № 236 (effective ten calendar days after the date 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 an exemption from the national regime in the implementation of public procurement

Footnote. Annex 1 – as amended by the resolution of the Government of the Republic of Kazakhstan dated 29.03.2024 № 240 (effective ten calendar days after the date of its first official publication).

№	The list of information that should be reflected in the justification	Information from the state body-developer
1	2	3
1.	State body – developer of the project	
2.	Justification of the need to adopt the project	
3.	Justification of the exclusivity of the case	
4.	Justification of the need to establish the specifics of public procurement related to the need to respect the confidentiality of information about potential suppliers before the end of public procurement (if the adopted act establishes such specifics) \	
5.	Justification of the need for public procurement from a single source by directly concluding a contract (if the adopted act defines a single supplier)	
6.	Specific goals, deadlines for expected results and the expected effectiveness of project adoption	
7.	Other documents (materials) and information that may be a justification	
1	2	3
	the need to establish an exemption from the national regime	

The first head of the state body _____ / _____

signature, decryption of the 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

* 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.