



On Approval of the Rules of Access to the Provision of Services on the Territory of the Airport (Aerodrome) Not Related to Airport Operations

Unofficial translation

Order of the Minister of Industry and Infrastructure Development of the Republic of Kazakhstan dated September 29, 2020 No. 501. Registered with the Ministry of Justice of the Republic of Kazakhstan on September 30, 2020 No. 21333.

Unofficial translation

Footnote. The heading - as revised by order of the Acting Minister of Transport of the Republic of Kazakhstan No. 146 of 22.12.2023 (shall be enacted after the day of its first official publication).

Pursuant to sub-paragraph 41-73) of paragraph 1 of Article 14 of the Law of the Republic of Kazakhstan “On the Use of the Airspace of the Republic of Kazakhstan and Aviation Activities”, **I HEREBY ORDER:**

Footnote. The preamble - as revised by order of the Acting Minister of Transport of the Republic of Kazakhstan No. 146 of 22.12.2023 (shall come into effect after the day of its first official publication).

1. That the attached Rules of Access to the Provision of Services on the Territory of the Airport (Aerodrome) Not Related to Airport Operations shall be approved.

Footnote. Paragraph 1 - as revised by order of the Acting Minister of Transport of the Republic of Kazakhstan No. 146 from 22.12.2023 (shall become effective after the day of its first official publication).

2. As prescribed by law, the Civil Aviation Committee of the Ministry of Industry and Infrastructure Development of the Republic of Kazakhstan shall:

1) provide the state registration of this order with the Ministry of Justice of the Republic of Kazakhstan;

2) post this order on the Internet resource of the Ministry of Industry and Infrastructure Development of the Republic of Kazakhstan.

3. Control over the execution of this order shall be assigned to the supervising Vice Minister of Industry and Infrastructure Development of the Republic of Kazakhstan.

4. This order shall take effect upon expiry of ten calendar days after the date of its first official publication.

*Minister of Industry and
Infrastructure Development
of the Republic of Kazakhstan*

B. Atamkulov

"Agreed"

Ministry of National Economy

Rules of Access to the Provision of Services on the Territory of the Airport (Aerodrome) Not Related to Airport Operations

Footnote. The Rules - as revised by Order of Acting Minister of Transport of the Republic of Kazakhstan No. 146 of 22.12.2023 (shall take effect after the day of its first official publication).

Chapter 1. General Provisions

1. These Rules of Access to the Provision of Services on the Territory of the Airport (Aerodrome) Not Related to Airport Operations (hereinafter - Rules) have been drawn up under the Law of the Republic of Kazakhstan “On the Use of Airspace of the Republic of Kazakhstan and Aviation Activities” and specify the procedure for access to services on the territory of the airport (aerodrome) not related to airport operations.

2. Basic definitions and terms used herein are as follows:

1) a tenderer is an individual or a legal entity involved in entrepreneurial activity, seeking to enter into a contract with an airport (aerodrome) operator;

2) airport (aerodrome) territory is the area of an airport terminal determined by the airport (aerodrome) operator to be suitable for the provision of services not related to airport operations. The airport (aerodrome) territory shall also include areas at the stage of construction or reconstruction intended for the provision of services not related to airport operations;

3) services not related to airport operations are services rendered by individuals and legal entities to perform business activities on the territory of the airport (aerodrome);

4) an area for the provision of services not related to airport operations is a part of the territory of an airport terminal, including those under construction or reconstruction, intended for the provision of services not related to airport operations, provided under an agreement (hereinafter referred to as the “area”);

5) airport (aerodrome) operator is a legal entity of the Republic of Kazakhstan, as well as a foreign state under international treaties ratified by the Republic of Kazakhstan, which uses the airport on the right of ownership or other legal grounds;

6) financial conditions is the payment for the use of space, the amount and conditions thereof are stipulated in the tender documentation and are payable to the airport (aerodrome) operator);

7) tender is a method of determining the winner of a tender to conclude a contract with an airport (aerodrome) operator;

8) tender commission is a collegial body established by the airport (aerodrome) operator to implement the tender procedure specified herein;

9) tender documentation is the documentation delivered to a tenderer for preparation of an application for participation in the tender, comprising requirements to the application for participation in the tender, conditions and procedure for the tender implementation.

Chapter 2: Procedure for Holding the Tender

3. The subject of the tender shall be:

areas of the airport (aerodrome) operator from 1 (one) square metre intended for catering facilities, automated food sales and baggage packing devices;

areas of an airport (aerodrome) operator of 15 (fifteen) square metres or more, not intended for catering facilities and automated food sales devices.

4. To secure access to the provision of services on the territory of the airport (aerodrome) that are not related to airport operations, the airport (aerodrome) operator shall hold a tender. Access to the provision of services in the controlled area of the airport shall be provided in compliance with aviation safety requirements.

The tender shall be held by the airport (aerodrome) operator in an open manner, and business entities shall be allowed to participate.

5. The tender shall be held by the airport (aerodrome) operator in compliance with the following principles:

1) openness and publicity of the tender;

2) ensuring equal opportunities for all tenderers to take part in the tender;

3) fair competition among the tenderers.

6. To ensure that the tender is held, a tender commission (hereinafter referred to as the commission) shall be formed from among the employees of the airport (aerodrome) operator, the composition of which shall be approved by the first manager of the airport (aerodrome) operator or a person acting in his/her capacity. The number of the members of the commission shall be odd and not less than 5 (five) persons.

The commission shall be headed by the chairman of the commission, and in his/her absence by the deputy chairman.

The airport (aerodrome) operator shall approve the secretary of the commission from among its employees, who is not a member of the commission and does not have the right to vote when the commission makes decisions.

7. Meetings of the commission shall be held as necessary and shall be authorised if they are attended by at least two thirds of the total number of commission members. Members of the commission shall personally attend the meetings and sign the minutes of the meetings of the commission.

8. Within 5 (five) working days from the date of establishment of the commission, the tender documentation shall be approved and an announcement on holding the tender with the attached tender documentation shall be placed on the internet resource of the airport (aerodrome) operator with the following details

- 1) technical specification;
- 2) a brief description of the services to be tendered for;
- 3) the start and end dates for the tenderers to submit documents for participation in the tender;
- 4) date, time and place of the procedure for opening envelopes with tender bids;
- 5) draft contract with indication of its validity period.

9. In the technical specification it shall be prohibited to impose conditions that entail limitation of the number of tenderers, including those related to:

- 1) establishment of any non-quantifiable and (or) non-administered requirements for tenderers;
- 2) the content of indications on trademarks, service marks, trade names, patents, utility models, industrial designs, the name of the place of origin of goods and the name of the manufacturer, as well as other characteristics that determine the affiliation of goods and services to a particular tenderer.

10. The tender documentation shall comprise:

- 1) full name and location of the airport (aerodrome) operator;
- 2) description and purpose of the area;
- 3) technical specification with indication of required technical and quality characteristics of the services to be tendered;
- 4) scheme of the area location;
- 5) payment for the use of the area;
- 6) deadline for acceptance of the tender bid;
- 7) requirements (including qualification requirements) to tenderers;
- 8) description of the procedure for opening, consideration, evaluation and comparison of tender bids of the tenderers;
- 9) date and time of opening of the tender bids of the tenderers (the time of opening of envelopes with tender bids shall not exceed 2 (two) hours from the moment of expiry of the final deadline for submission of tender bids);
- 10) draft contract.

The tender documentation may not establish qualification requirements that limit and complicate participation in the tender.

11. Should the subject of the tender be 2 (two) or more areas, the airport (aerodrome) operator shall divide the areas into lots in the tender documentation. In this case, the winner of the tender shall be selected for each lot.

Should the number of passengers served at the airport exceed 2 (two) million people per year, the airport (aerodrome) operator shall allocate space for the intended purpose - baggage packing - to at least 2 (two) tenderers in each terminal intended for international and domestic flights.

12. The tenderer shall meet the following requirements:

- 1) has legal capacity;
- 2) availability of tangible and non-tangible assets in ownership or on lease terms for the period of the contract (if such is required by the service provision technology);
- 3) compliance with the requirements specified in the technical specification;
- 4) is solvent at the time of the tender, as well as its financial and economic activity is not suspended under the laws of the Republic of Kazakhstan and is not subject to liquidation;
- 5) is not included in the register of unfair participants of public procurement and in the Unified Register of Debtors.

13. The tenderer shall apply in the form as per the Annex hereto.

The following documents (information) shall accompany the application:

- 1) data of the second-tier bank (banks) in which settlement accounts of the tenderer are opened on absence of overdue payables of the tenderer for more than 3 (three) months preceding the date of opening of envelopes with bids to the bank (banks) (in case the tenderer is a client of several second-tier banks or branches, as well as a foreign bank, this certificate shall be given from each of such banks) signed by the first head or a person replacing him/her, with the seal of the bank (banks);
- 2) details of absence (presence) of tax arrears of the taxpayer, arrears of mandatory pension contributions, mandatory professional pension contributions and social contributions received not earlier than one month preceding the date of opening of envelopes with tender bids;
- 3) detailed description of the main technical and operational specifications of the services;
- 4) available financial, material and labour resources required for the proper and continuous provision of services;
- 5) sketch and working designs at the request of the airport (aerodrome) operator.

14. The deadline for filing tender bids shall be 15 (fifteen) calendar days and shall start from the day of posting the tender announcement. The tender bid shall be filed pursuant to the procedure specified in Chapter 3 hereof.

15. Acceptance and registration of tender bids shall be performed by the secretary of the commission. The safety of tender bids shall be ensured by the secretary of the commission.

Applications for participation in the tender shall be received by entering them in chronological order as they are presented by the tenderers in the application registration log (stitched, numbered, initialed and sealed by the secretary of the commission). The date and time of receipt of the application shall be recorded in the application registration log.

A tender bid provided after the deadline shall not be opened and shall be returned to the tenderer.

16. Tenderers shall amend or withdraw their tender prior to the deadline for application submission. The withdrawal of a tender shall be made in the form of a written statement in any form to the airport (aerodrome) operator.

Tenderers who have withdrawn their tender bids shall resubmit an application for participation in the tender prior to the deadline for presenting the tender bids. No changes to bids shall be permitted after the deadline for submission of tender bids.

17. A tenderer and its affiliated person shall not participate in the tender for one lot.

18. The time duration between the deadline for acceptance of tender bids and the commencement of the process of opening of envelopes with tender bids shall not exceed 2 (two) hours. Tenderers or their representatives, whose powers are confirmed by a power of attorney, shall be present at the meeting of the commission on opening of envelopes with tender bids.

19. Prior to the commission meeting, the secretary of the commission shall verify the documented powers of the tenderers' representatives to represent their interests during the procedure for opening envelopes with tender bids.

20. When opening each envelope with a tender bid, the commission shall announce the list of documents contained in the tender bid. From the moment of bid opening, the commission shall review the bid provided by the tenderer and the attached documents for completeness and accuracy within 3 (three) working days.

21. Should the attached documents meet the requirements of paragraphs 12 and 13 hereof, the commission shall allow the tenderer to participate in the tender.

22. The commission shall reject and return the tender bid of a participant in case when:

1) the tenderer does not conform to the requirements mentioned in paragraphs 12 and 13 hereof;

2) the tenderer's bid and the accompanying documents do not fulfil the requirements specified in paragraph 13 hereof;

3) the fact of providing unreliable information on compliance with the requirements specified in paragraphs 12 and 13 hereof has been established;

4) provision of a tender bid in breach of the requirements of Chapter 3 hereof.

Denial of admission to participation in the competition on other grounds, apart from the cases specified herein, shall be prohibited.

23. The secretary of the commission shall:

1) draw up the relevant minutes of opening of envelopes with tender bids;

2) forward the minutes of opening of envelopes with competitive bids to the members of the commission for signing.

24. Within the period of review of tender bids the chairman of the commission shall convene meetings of the commission to review and discuss the submitted tender bids.

25. When holding a tender, it shall be prohibited to declare more than 1 (one) winner per lot. The winner of the tender shall be determined by the tenderer based on the highest price of the tender price offer.

26. A decision of the commission shall be taken by open voting and shall be considered adopted if a majority of votes of the total number of members of the commission are cast in favour of it. Each member of the commission shall have one vote. In case of a tie vote, the decision in favour of which the chairman voted shall be deemed adopted.

A member of the commission shall have a possibility to express a dissenting opinion, which shall be stated in writing and attached to the minutes on the results of the competition.

27. The commission shall summarise the tender results within no more than 7 (seven) working days from the date of opening of envelopes with bids, with the drawing up of a protocol on the results of the tender, which shall be signed by the members of the commission and the secretary of the commission.

When summarising the results of the tender, the commission, in addition to the tender winner, shall declare the tenderer whose proposal was the most preferable after the tender winner.

28. The airport (aerodrome) operator shall post the text of the signed minutes on the outcomes of the tender on the internet resource of the airport (aerodrome) operator no later than 5 (five) working days following the day of signing the minutes on the outcomes of the tender.

From the date of publishing the information on the outcomes of the tender within 10 (ten) calendar days, the airport (aerodrome) operator shall conclude with the winner of the tender the relevant contract for a period of 3 (three) years.

29. If the winner of the tender refuses to conclude a contract with the airport (aerodrome) operator, the commission shall commence negotiations on concluding a contract with the tenderer whose tender bid is the most preferable after the winner of the tender.

Should the tenderer, whose bids are recognised as the best after the winner of the tender, refuses to conclude a contract with the airport (aerodrome) operator, the tender shall be deemed not to have taken place.

30. A tender shall be recognised as failed by the commission in the event of:

- 1) there are no tender bids submitted for participation in the tender;
- 2) less than 2 (two) bids have been submitted for participation in the tender;
- 3) if 1 (one) tenderer is admitted to participate in the competition;
- 4) if no tenderer is admitted to participate in the tender.

31. Should the tender be recognised by the commission as failed, the commission shall make a decision on holding a repeated tender not later than 3 (three) working days from the date of recognition of the tender as failed. The repeated tender shall be held as specified herein.

In the case of a repeated tender, by the decision of the commission, the tender shall be recognised as valid if less than 2 (two) bids of the tenderers are filed, providing that the only tenderer meets the qualification requirements established herein.

32. A tenderer may appeal against unlawful actions of the airport (aerodrome) operator, the tender commission and the secretary of the tender commission under the procedure established by the laws of the Republic of Kazakhstan.

Chapter 3: Procedure for filing of tender bids

33. The tender bid shall be supplied by the tenderer or a person representing its/her/his interests by power of attorney, on paper in a sealed envelope. The paper version shall be stitched, with numbered pages, the last page shall be certified by the signature and seal (if any) of the tenderer. No insertions between lines shall be allowed in the documents.

34. On the front side of the sealed envelope, the tenderer shall specify:

- 1) the number and name of the lot;
- 2) full name and postal address of the tenderer
- 3) full name of the airport (aerodrome) operator.

The tenderer shall independently bear all costs associated with the preparation of the tender bid.

Chapter 4. Final Provisions

35. The winner shall take part in a preliminary meeting with representatives of the airport (aerodrome) operator and receive the data required to clarify the terms and conditions of the contract.

36. The winner shall be granted the opportunity to visit the area for inspection in compliance with the safety requirements established on the territory of the airport (aerodrome). The winner shall bear all costs associated with access to the territory of the airport (aerodrome) on its/his/her own.

Appendix
to the Rules of Access
to the Provision
of Services on the Territory
of the Airport (Aerodrome)
Not Related To Airport
Operations

Document Form

APPLICATION LETTER

1. I (we), _____ (hereinafter referred to as the Tenderer), having reviewed the published announcement of the tender and having familiarised myself (ourselves) with the tender documentation, hereby confirm my (our) awareness of the terms

and conditions of the tender and the requirements imposed on the Tenderer and inform of my (our) readiness to participate in the tender for the lot under No. _____.

2. I (we), the Tenderer, hereby warrant to:

1) ensure the fulfilment of financial conditions under the terms and conditions of the contract;

2) ensure compliance with the qualification requirements stated in the tender documentation;

3) the proposed financial conditions: KZT _____ per month excluding value added tax.

3. I (we), the Tenderer, hereby fully and unconditionally agree that in case of non-compliance with the requirements for the Tenderer, I (we), the Tenderer shall forfeit my (our) right to participate in the Tender;

4. This application is a form of expression of the Tenderer's full and unconditional consent to participate in the Tender under the conditions set out in the procedure announced in the tender announcement.

5. _____

(signature) (surname, first name, patronymic (if any) of an individual or name of a legal entity and surname, first name, patronymic (if any) of the head or authorised representative of the legal entity acting under a power of attorney)

“ _____ ” _____ 20 _____

Stamp here (if any)