

Royal Decree no. 36/2008

Issuing the Tender Law

After perusal of the Constitution of the State issued by the Royal Decree no. 101/96;

The Royal Decree no. 48/76 on the signing of external and internal transactions and amendments thereto;

The Royal Decree no. 39/82 on the Protection of Public Property and Avoidance of Conflict of Interest;

And the Royal Decree no. 86/84 promulgating the Government Tender Law & Regulations;

And in view of the exigencies of public good;

We, Qaboos Bin Said, Sultan of Oman, hereby decree the following:

Article One

The provisions of the accompanying Law of shall apply to tenders.

Article Two

The Chairman of the Tender Board shall issue the necessary regulations and decisions for the enforcement of this law.

Pending the issuance of such regulations and decisions, the existing rules, regulations and decisions shall continue to be in force insofar as they are not inconsistent with the provisions of the accompanying Law.

Article Three

The aforementioned Royal Decree no. 86/84 is hereby repealed and so are all provisions contravening the accompanying law.

Article Four

This decree shall be published in the Official Gazette and shall be effective six months after the date of such publication.

Issued on: 16th Rabee' Al Awwal 1429 A.H.

Corresponding to: 24th March 2008.

Qaboos Bin Said
Sultan of Oman

The Tender Law

Part I

Definitions & General Provisions

Article One

In the application of the provisions of this law, the following words and expressions shall carry the meanings specified against each unless the context requires otherwise:

Board: Tender Board

Chairman of Board: Chairman of the Tender Board

General Secretariat: Executive apparatus of the Tender Board

Bid: Offer submitted in the tender, engagement or competition

Concerned Office: A government office or company governed by the provisions of this law.

Executive Regulations: Executive Regulations of the Tender Law

Article Two

The provisions of this law shall apply to all the administrative offices of the state, public authorities and organizations and companies that are independent bodies corporate owned fully by the government with the exception of security and defence offices or any other government organizations excluded by any other law.

Article Three

Contracts for supplies, execution of works, transportation, provision of consultancy services and studies, technical works and purchase and leasing of real estate shall be granted through public tenders.

However, contracting may also be done through any of the following means:

- A. Limited Tender
- B. Engagement
- C. Direct Assignment
- D. Competition

Article Four

The public tender, limited tender, engagement and competition shall be governed by the principles of openness, equality of opportunity, equality and freedom of competition.

Article Five

While applying the provisions of this Law, identical supplies, works or services may not be split.

Article Six

Staff at offices governed by the provisions of this Law may not, directly or indirectly, submit bids or offers to such offices. Contracts may not be made with them for the purchase of items nor may they be charged with the execution of works or provision of services, without prejudice to the Royal Decree no. 39/82 and its interpretation.

This shall not apply, if required, to the purchase of their works, and their technical productions, or the assignment of such works to them by a grounded decision issued by the head of the concerned office up to RO 5,000 and by the Ministry of Finance for any excess amounts provided they do not participate in the procedure for such assignment in any manner whatsoever.

Article Seven

The regulations shall govern the necessary rules and procedure for the implementation of the provisions of this law.

Part II

The Tender Board

Article Eight

The responsibility for all government tenders shall be borne by the Tender Board to be constituted by a Royal Decree. The Board shall perform the following functions:

- A. It shall review the technical specifications, conditions and instructions provided by the concerned offices and ascertain their propriety. It may in so doing seek the assistance of technical experts from within or outside the Sultanate.
- B. It shall specify the method of inviting tenders and publicizing them on the basis of approved data and specifications submitted by the concerned offices.
- C. It shall receive bids from suppliers, contractors and consultancy offices, open their envelopes and then forward them to the concerned offices for study, analysis and briefing.
- D. It shall receive the results of the analyses of bids from the concerned offices, review and evaluate them and take decisions awarding them.
- E. It shall constitute tender committees all over the Sultanate and define their functions in coordination with the concerned offices.

- F. It shall classify and register the suppliers, contractors and consultancy offices on the basis of the data submitted by them pursuant to the provisions of organizational regulations issued by the Board setting forth the general conditions for the classification and registration of suppliers, contractors and consultancy offices and shall fix the registration fees after the approval of the Ministry of Finance.
- G. It shall re-evaluate the suppliers, contractors and consultancy offices referred to in paragraph F of this article, shall serve notices upon them regarding reports received by the Board from the concerned offices concerning dereliction of or failure to carry out the duties assigned to them and shall carry out the penalties stipulated in the law.
- H. It shall fix the cost of the copies of the conditions and specifications of all the tenders governed by the provisions of this law.
- I. It shall perform any other functions assigned by virtue of any other law.

Article Nine

The Board may decide to deprive a supplier, contractor or consultancy office from dealing with the offices governed by the provisions of this law within a period specified by it in accordance with the situation of each case in the following cases:

- A. If it submits data or information proved to be inaccurate.
- B. If it uses fraudulent means to secure the contract.
- C. If it fails to satisfy a condition or meet a basic liability under a previous contract with any office governed by the provisions of this law.

Article Ten

The Board shall have a General Secretariat whose organizational apparatus shall be issued and functions defined by a Royal Decree.

Article Eleven

The Board's activities shall be treated as confidential and all the workers of the General Secretariat of the Board shall maintain such confidentiality and shall not disclose any information about the activities of the Board without the permission of its chairman.

Article Twelve

The meetings of the Board shall be valid only if attended by a majority of its members including the Chairman or the Deputy Chairman.

The decisions of the Board shall be issued by an absolute majority of the members present. In case of a tie, the Chairman shall decide the matter.

In cases where the Board notices a violation of the recommendation of the concerned offices, the decisions of the Board shall be valid only if they are issued by a two thirds majority of the members present.

Article Thirteen

A member of the Board may, in necessary cases acceptable to the Board, deputize a person who acts on his behalf legally in the government office he represents to attend a session.

The cases of proxy in one session may be no more than two.

Article Fourteen

If a member of the Board has a direct or indirect interest in the tender invited, he shall notify the Chairman of the Board of such interest and avoid looking at the tender.

In all cases, a member shall avoid looking at the tender if he or his relative of the second degree is the bidder or owns a share in the bid or is a member of the Board of Directors of the company that has submitted the bid, or an employee, agent or sponsor thereof.

Article Fifteen

As an exception to article 8 of this law, an internal committee at the concerned office, headed by the head of the office or his designee, shall perform the functions of the Board in respect of tenders the value of which does not exceed RO 250,000.

The head of the concerned office may constitute tender subcommittees at directorates general, departments or offices under the control of such office in the governorates and regions, chaired by the directors general or officers of such departments and offices.

These committees shall perform the functions of the Board in respect of the tenders, works and services the value of which does not exceed RO 50,000.

The decision of the subcommittee shall be final if the value of the tenders does not exceed RO 10,000.

Its recommendations shall be forwarded to the head of the concerned office for approval if the value of the tender exceeds the latter value.

The concerned offices shall ensure that they send to the Board the copies of analyses and decisions on assignment of tenders that may be invited and announced and whose envelopes may be opened.

Part III

Public Tender

Article Sixteen

A public tender is a set of procedures publicized in accordance with the provisions contained in this Law and its regulations. It may be local or international.

An international tender is one wherein international companies and establishments not registered in the Sultanate may participate.

A local tender is one in which participation is confined to companies and establishments enrolled in the Commercial Register or any professional register in which the Board decides to include their names in specific cases.

Chapter I

Procedure Preceding Submission of Tenders

Article Seventeen

The concerned office shall specify the estimated cost of the required supplies, works or services in the tender. For this purpose, it may seek the assistance of its competent technical office. The cost shall be submitted to the Board for reference while comparing the prices submitted by the participants in the tender.

Article Eighteen

The notice on the tender shall be published in a widely circulated Arabic and English language newspaper well in time for the date set for providing the supplies, executing the works or providing the necessary services in a manner that permits re-invitation of tender if required.

It may also be publicized through electronic means and at the notice board at the Board or at the concerned office in Arabic and English languages.

The notice shall be published in the Official Gazette in case of tenders with a value exceeding RO 500,000.

The Board may, by a grounded decision, overlook the violations related to publication if the public good so warrants.

Article Nineteen

A minimum period of forty days shall be fixed for the submission of bids in the tenders from the date of the publication of the first notice on the tender.

The Board may, at the request of the concerned office, shorten this period up to a minimum of fifteen days in accordance with the cases specified in the regulations.

This shall not apply to tenders related to annual supplies unless re-invited.

Article Twenty

The period of validity of bids in the tenders the specimen of which require a chemical analysis shall be ninety days.

The period may be increased in case of tenders whose specimen require a chemical analysis to the extent required for such analysis.

The period may also be shortened in cases of annual supplies and urgent works and contracts.

In all cases, the minimum period shall be sixty days to be fixed depending on the nature of the tender.

Article Twenty-one

While inviting tenders, no condition or article may be modified in the general conditions set forth in standard contracts in the Sultanate without the approval of the Ministry of Finance and the Ministry of Legal Affairs.

Article Twenty-two

The Board may, after the approval of the Ministry of Finance, increase the percentage of the advance instalment and make a provision to this effect in the conditions of the tender.

It shall be entitled to choose the offer that leads to the reduction of prices provided the existing interest is added to the value of the bids accompanied by advanced instalment while giving preference to one tender over another till the date of its actual entitlement.

Article Twenty-three

International companies and establishments not registered in the Sultanate may participate in international tenders, provided they complete the registration in accordance with the prevailing regulations in the Sultanate within thirty working days from the date on which they are notified of the acceptance of their bid.

Chapter II

Submission of Tenders

Article Twenty-four

The bid shall satisfy the conditions and conform to the instructions contained in the tender notices and documents.

Article Twenty-five

A bid on the supply of items to the concerned office shall be consistent with the standard specimen, specifications or approved drawings which the bidder must peruse. His submission of the bid shall be treated as an

acknowledgement of his perusal thereof and the items shall be supplied in accordance therewith.

If the concerned office does not have standard specimen, the bidder may be asked to submit the specimen. The supply shall be in accordance with the technical specifications even if they are inconsistent with the specimen, unless the tender conditions show that the specimen are aimed as such.

Article Twenty-six

Technical and financial bids shall be submitted in one envelope unless the Board decides in accordance with the requirements of the nature of each tender, that the technical, financial or other bids should be submitted in separate envelopes.

Article Twenty-seven

The results of the opening of the envelopes shall be announced immediately after they are opened through electronic means.

They may also be announced through any other means.

Article Twenty-eight

If the Board finds that a bid is unusually below the bids submitted, it shall be entitled to ascertain from the bidder the extent to which the latter has satisfied the conditions of the tender and his ability to execute the contract.

Chapter III

Decision on Tenders

Article Twenty-nine

A decision on the tender shall be taken and notified in case of acceptance before the conclusion of the validity period of the bids.

Failing this, the concerned office shall, through the Board, ask the bidders at the appropriate time to extend the validity of their bids for an appropriate period.

Article Thirty

If the tender invitation includes a request for the submission of credit facilities (finance), the bids accompanied by such facilities shall be taken into consideration while deciding on the priority of the tenders.

The Board may cancel the tender if the bids are not accompanied by the necessary credit facilities for financing.

Article Thirty-one

Comparison shall be made between the bids for the selection of the best one in accordance with the criteria and grounds specified in the tender document. If the concerned office decides to exclude one or more bids, its opinion shall be grounded and the Board shall, in the decision on the assignment, not be bound to accept the lowest or any other bid.

Article Thirty-two

The Board shall communicate the result of the award to the head of the concerned office which shall in turn notify the winning bidder in the tender within a maximum of one week from the date of its approval, unless the bidder has, in his bid, specified a longer period, in which case the notice shall be served well in time for the conclusion of such period.

The notice shall underline the need for the submission of a guarantee for proper execution or professional insurance policy in case of companies and consultancy offices within the period specified in article 44 of this law.

The notice shall also state that the government shall not be bound by the tender before the signing of the contract.

Article Thirty-three

After the opening of the envelopes, negotiation may not be made with a bidder on the modification of his bid unless the lowest bid is accompanied by reservation or reservations and the value of the lowest bid not accompanied by such reservations exceeds the bid accompanied by reservations.

Negotiation may be made with the bidder of the lowest bid accompanied by reservations to make him withdraw all or some of his reservations so as to make his bid consistent with the conditions of the tender to the extent possible.

If he refuses to do so, negotiation may be made with the next bidder.

No negotiation shall be made on the modification with a bidder unless such modification has been turned down by all the lower bidders.

Article Thirty-four

Negotiation may be made in cases specified in article 33 of this law only by a decision of the Board taken after consulting the concerned office.

The decision on the outcome of the negotiation shall be taken by the Board.

Article Thirty-five

The Board may, after agreement with the concerned office, in case of equal prices between two or more bids, split the declared amounts between the

bidders if the interest of work so warrants. This may be done if the lowest bidder attaches the condition of long periods for supplies that do not suit the condition of work in the concerned office.

Article Thirty-six

Priority in bids shall be given to national products of small and medium industries that meet the conditions and specifications.

The priority shall include priority in prices in the range of a 10% increase.

Article Thirty-seven

A tender shall be re-invited if only one bid is received even if it satisfies the conditions.

The tender shall be treated as single if even other bids violating the tender conditions and specifications are received with it.

If a tender is re-invited and only one bid is submitted for it, the Board may accept it at the request of the concerned office.

In case of re-invitation of tender, the period for the submission of bids may be reduced to half.

Article Thirty-eight

As an exception to article 37 of this law, a tender may be converted into engagement of the single bidder by a decision of the Board taken at the recommendation of the concerned office, subject to the following two conditions:

- A. If the need of the work does not permit re-invitation of the tender or if there is no benefit in its re-invitation.
- B. If the single bid satisfies the conditions and specifications and has a suitable price.

Article Thirty-nine

Tenders may be cancelled by a decision of the Board, explaining the grounds, after their publication and before a final decision on them if they are discarded finally or if the public good so warrants.

The Board may cancel the tender at the recommendation of the concerned office in any of the following cases:

- J. If a single bid is submitted or only one bid remains after the rejection of other bids.
- K. If all or most of the bids are accompanied by essential reservations.
- L. If the value of the lowest bid exceeds the market value.

Article Forty

If the tender is cancelled before the date set for the opening of envelopes, the cost of the copy of the tender documents shall be refunded to the purchaser and the full copy of the tender documents returned to the Board. If the tender is cancelled after the date specified in the preceding paragraph, the cost shall be refunded only to the bidder of the tender.

Article Forty-one

The Board shall exclude the bid by a grounded decision in any of the following cases:

- A. If public interest so demands.
- B. If the bid does not satisfy the conditions and specifications.
- C. If the bidder is not registered in the Sultanate. (This shall not apply to bids submitted in international tenders by international companies and establishments)
- D. If the bid is not accompanied by full provisional insurance.
- E. If the bidder does not prove the soundness of its financial status.
- F. If the bid documents are incomplete, not signed or not stamped by the bidder.
- G. If a final judgement has been issued on the insolvency or bankruptcy of the bidder or judicial measures taken against him for this reason.
- H. If the bid represents a violation of the Royal Decree no. 39/82 on the Protection of Public Property and Avoidance of Conflict of Interest.

Article Forty-two

The concerned offices may issue modification orders increasing or reducing the period, value, quality, quantity or specifications of the items, works or services covered by the contract within the validity period of the contract up to a total of RO 100,000 or 10% of the value of the original bid approved by the Board, whichever of the two amounts is larger, provided the prices of the modification orders are the ones approved by the Board.

For the calculation of the cost of modification orders, their value shall be joined by addition or deduction. If the modification order exceeds the limit stipulated in the preceding paragraph, the Board may be contacted for the obtainment of its approval subject to the following conditions:

1. The necessary endorsement and approval of the contractor to abide by the prices specified in the contract, if such prices continue to be appropriate and do not exceed the market prices.

2. If the modification order includes the addition of new quantities, items, works or services not included in the contract but are connected with its subject, a direct agreement may be made on them with the contractor.

Chapter IV

Guarantees

Article Forty-three

A provisional security equivalent to 1% of the total value of the bid shall be submitted with each bid.

If the bidder withdraws his bid before the expiry of the period specified for the validity of the bid, the provisional security submitted by him shall become the property of the Board without the need for a notice or any other measure.

The provisional security shall be refunded to the bidders of the unaccepted bids immediately after the expiry of the period set for the validity of the bid, or before that, if the tender is awarded to a bidder or is cancelled.

The provisional security shall be refunded to the winning bidder if he submits a guarantee for adequate execution.

Article Forty-four

The winning bidder shall, within ten working days from the day after the day on which he is notified of the acceptance of his bid, submit a guarantee for the adequate execution of the contract equivalent to 5% of the total awarded value or submit a professional insurance policy in case of companies and consultancy offices.

In respect of the contracts concluded with a contractor abroad, the guarantee shall be submitted within twenty working days.

The grace period specified in the two cases referred to in the preceding paragraph may be extended for an additional period not extending ten days with the approval of the head of the concerned office.

Article Forty-five

If the winning bidder does not submit a guarantee for adequate execution within the period stipulated in article 44 of this Law, the Board may, by a written letter, cancel the award and confiscate the provisional security without prejudice to the concerned office's right to compensation.

Article Forty-six

The bidder of the accepted bid shall be exempted from the guarantee for adequate execution if he supplies the contracted items and the concerned

office accepts them finally within the period specified for submitting the guarantee for adequate execution.

Part IV

Limited Tender

Article Forty-seven

A contract may be entered into through a limited contract in cases the nature of which requires restricting the participation in the tender to specific suppliers, contractors or consultants within or outside the Sultanate who satisfy the required conditions.

Article Forty-eight

A pre-qualification invitation shall be extended to suppliers, contractors and consultancy offices for participation in the limited tender by publishing a notice in the printed media in or outside the Sultanate.

The qualification of the suppliers, contractors or consultancy offices shall be approved by a decision of the Board.

Article Forty-nine

Suppliers, contractors or consultancy offices whose qualification has been approved shall be invited to participate in the limited tender through official letters or electronic mail.

The tender shall be governed by the procedure and rules applicable to public tenders.

Part V

Engagement

Article Fifty

Items may be purchased or works executed through engagement in order to secure the best bids at the lowest prices in special cases or in any of the following situations:

- A. Articles the manufacture or import of which is monopolized or whose nature or the purpose of whose obtainment entails that they should be purchased from the places of their production or those which are available only with an individual.
- B. Articles for which no exact specifications may be made.
- C. Technical and consultancy works or services that require specific technical know how or specific specialization.

- D. Animals, birds and poultry of various kinds.
- E. Supplies and contracts of works or transport for which tender procedure may not be followed on account of urgency.
- F. Supplies, contracts for works, transport and provision of services for which no tender bids have been submitted or for which bids with unacceptable prices have been submitted and the need for them does not permit re-tendering procedures.
- G. Execution of works or provision of services by concerned entities outside the Sultanate.
- H. Purchase and leasing of real estate.

Article Fifty-one

The engagement shall be done by a committee set up by the Board under the chairmanship of one of its members with the following as its members: Secretary-General of the Ministry of Finance, a representative of the concerned office and a competent officer whose position and technical expertise is consistent with the importance and nature of the engagement.

As an exception to the first paragraph, engagement related with the works of the Ministry of Foreign Affairs carried out outside the Sultanate shall be done by a special Committee constituted in the following manner:

- Under-secretary to the Ministry of Foreign Affairs (Chairman of the Committee)
- A representative of the Ministry of Finance (Deputy Chairman)
- A representative of the Ministry of National Economy (Member)
- Head of the Department of Projects & Properties at the Ministry of Foreign Affairs (Member)
- Deputy Head of the Department of Projects & Properties at the Ministry of Foreign Affairs (Convenor of the Committee)

Article Fifty-two

The concerned offices may purchase their requirements and execute their projects through engagement in cases referred to in article 50 of this Law, provided the value in each case does not exceed RO 100,000, without prejudice to the Royal Decree no. 48/76 on the signing of external and internal financial transactions.

The Engagement Committee at the concerned offices shall be constituted under the Chairmanship of the Ministry's Under-Secretary or a person acting on his behalf legally with two members who are competent employees

whose position and technical expertise is consistent with the importance and nature of the engagement.

Article Fifty-three

A supplier shall be exempted from provisional insurance if he supplies the articles intended to be purchased and they are accepted by the concerned office immediately after the completion of the contract.

Part VI

Direct Assignment

Article Fifty-four

The Board may, in special cases, enter into a contract through direct assignment to execute works, obtain technical or consultancy services, supply articles or carry out assignments.

Article Fifty-five

The concerned offices may enter into contract through direct assignment with government offices, organisations and companies to execute works, obtain technical or consultancy services, supply articles or carry out assignments.

They may also, after the approval of their head, enter into contracts, through direct assignment, with a supplier, contractor or a consultancy office, provided the value of the assignment does not exceed RO 10,000 and provided further that the prices are consistent with the description of the grounds for such assignment.

Article Fifty-six

The concerned offices may, if required, after the approval of their head, enter into a contract, through direct assignment with the supplier, contractor or consultancy office provided its value does not exceed RO 25,000.

The prices shall be consistent with the description of the grounds for such assignment.

Part VII

Competition

Article Fifty-seven

Competition is a special method for contracting for the purpose of conducting studies or preparing designs, layouts, models or other technical works required for a specific project.

Article Fifty-eight

The concerned office shall specify the objectives, framework and specifications of the project in detail and the prizes, remunerations or compensations to be granted to the winners, in addition to the status of the ownership of the winning and non-winning reports, studies, designs and models and any other conditions the concerned office deems fit.

Article Fifty-nine

Invitation for participation in the competition shall be extended either through advertising in the printed or electronic media or through direct invitation to those possessing expertise and skills required for the project or the purpose of the competition.

Article Sixty

The Board shall, after coordination with the concerned office, constitute a committee comprising of a number of competent staff related to the subject of the competition in order to study the bids submitted.

The committee may summon the participants and discuss their bids with them.

Article Sixty-one

The Committee shall enter its procedure in a record specifying the bids submitted, the opinions and criteria approved by it for comparison between the tenders and its recommendations on the selection of the winning bidders and the arrangement of the other bids.

The Committee shall submit the record, containing these recommendations and accompanied by the bids, to the Board for the issuance of the decision.

Article Sixty-two

The provisions of Chapter IV of Part III of this law shall not apply to the competition.