

ROYAL DECREE 36/2008

Promulgating the Tender Law

UNOFFICIAL TRANSLATION
SAID AL-SHAHRY LAW OFFICE
IN ASSOCIATION WITH
REED SMITH RICHARDS BUTLER
PO Box 1288, Ruwi 112
Sultanate of Oman
Tel: 24603123
Fax: 24603400

ROYAL DECREE 36/2008
Promulgating the Tender Law

We Sultan Qaboos

Sultan of Oman

After perusal of the Basic Law of the State promulgated by Royal Decree No. 101/96,

Royal Decree No. 48/76 relating to the Signing of External and Internal Financial Transactions;

Royal Decree No. 39/82, on Protection of Public Property and Avoidance of Conflict of Interest,

Royal Decree No. 86/84 promulgating the Law and Implementing Regulations of Government Tenders; and

Pursuant to the Public Interest

- Decreed as Follows -

Article 1

The provisions of the attached Law shall be applicable to Tenders

Article 2

The President of the Tender Board shall issue the regulations, rules and decisions necessary for implementing the attached Law. Until the aforesaid regulations and rules are issued, the current regulations, rules and decisions shall continue to be enforced to the extent they are not in conflict with the attached Law.

Article 3

Royal Decree No. 86/84 above mentioned and all that is contrary to the attached Law shall be repealed.

Article 4

This Royal Decree shall be published in the Official Gazette and shall come into force six months after the date of its publication.

Issued on : 16 Rabial Awal 1429 A.H
Corresponding to: 24 March 2008

THE TENDER LAW

PART ONE

Definitions and General Provisions

Article 1: In the application of this Law, the following words and expressions shall have the meaning assigned to each of them unless the context otherwise requires:

The Board	:	the Tender Board.
The Secretariat General	:	The executive body of the Tender Board.
Tender	:	The offer submitted in a Tender, Selective Tendering Procedures or Competition.
Relevant Authority	:	Any governmental unit or company subject to the provisions of this Law.
The Regulations	:	The Implementing Regulations of the Tender Law.

Article 2: The provisions of this Law shall be applicable to all units of the administrative structure of the State, corporations, organizations and companies, which are legal entities and wholly owned by the Government with the exception of the Security and Defence entities or any other governmental unit in respect of which an exception is provided in any other law.

Article 3: Contracting for supplies, execution of works, transportation, provision of services, consultancy studies, technical works, purchase and leasing of real property shall be effected by means of Public Tenders.

As an exception to the foregoing, contracting may be effected by any of the following means:-

- a) Limited Tender;
- b) Selective Tendering Procedures;
- c) Direct Order;
- d) Competition

Article 4: Each Public Tender, Limited Tender, Selective Tendering Procedures and Competition shall be subject to the principles of transparency, equal opportunities and equality and freedom of competition.

Article 5: In the application of this Law, supplies, works or services which are similar, shall not be divided.

Article 6: Employees of entities subject to this Law shall not, directly or indirectly, submit tenders or offers to these entities. Further, and without prejudice to Royal Decree No. 39/82, and the interpretation thereof, no items shall be purchased from them nor shall execution of works or provision of services be assigned to them; provided that in the case of necessity the purchase of their writings and works of art or assigning to them execution of works or provision of services shall be in accordance with a reasoned decision of the head of the relevant entity within limits not exceeding five thousand Omani Rials and the decision of the Ministry of Finance if the sum exceeds that limit. Provided further, that they shall not in any manner, participate in the process of the assignment.

Article 7: The Regulations shall regulate the rules and procedures necessary for implementing the provisions of this Law.

Article 8: A Tender Board to be established by Royal Decree shall take charge of all Tenders. The Board shall have the following functions:

- a) to review the technical specifications, conditions and instructions submitted by the relevant entities and ensure their sufficiency. The Board may in this respect seek the assistance of technical expertise from within or outside the Sultanate;
- b) to determine the method of invitation for Tenders and publication of notices in respect thereof in accordance with the approved data and specifications submitted by the relevant entities;
- c) to receive tenders from suppliers, contractors and consultancy offices, open the tender envelopes thereof, study them or refer the same to the competent units for study, analysis and reporting on them;
- d) to receive results of analysis of tenders from the relevant units, review and evaluate them and take the award decisions in respect thereof;
- e) to form Tender committees throughout the Sultanate and determine their authorities in coordination with the relevant units;
- f) to classify and register suppliers, contractors and consultancy offices in the light of information provided by them in accordance with the provisions of regulatory regulations to be issued by the Board specifying the general conditions for classification and registration of suppliers, contractors and consultancy offices and determine the registration fees after approval of the Ministry of Finance;

- g) to re-evaluate suppliers, contractors and consultancy offices referred to in paragraph (f) of this Article and notify them of reports received by the Board from the relevant units concerning violations or defaults in execution of works assigned to them and impose the penalties prescribed by this law;
- h) to determine the price of copies of the conditions and specifications of Tenders governed by this Law; and
- i) to exercise any other functions provided for in any other law.

Article 9: The Board may decide to deprive a supplier, contractor or consultancy office from dealing with the units that are subject to the provisions of this Law during a period to be specified by the Board as the circumstances of each case may require, in the following cases:-

- a) if it provides information which proves to be incorrect;
- b) if it uses fraudulent means for obtaining a contract;
- c) if it has failed to perform satisfactorily any substantial requirement or obligation under a previous contract with any unit which is subject to the provisions of this Law.

Article 10: The Board shall have a Secretariat General whose organizational structure and functions shall be established by Royal Decree.

Article 11: All the business of the Board shall be deemed to be confidential and all employees of the Board's Secretariat General shall maintain such confidentiality and refrain from disseminating any information relating to the business of the Board without permission of the President of the Board.

Article 12: The quorum for the Board meetings shall be constituted by the presence of the majority of its members, provided that the President of the Board or his deputy shall be among them.

Decisions of the Board shall be passed by a simple majority of its members present. In the event of a tied vote, the votes which include that of the President of the Board shall prevail.

In the cases where the Board deems it necessary to act against the recommendation of the relevant unit, it is required for the validity of the Board's decisions that they should be passed by a two-third majority of its members present.

Article 13: In cases of necessity approved by the Board, a member of the Board may deputise whoever legally acts for him in the governmental unit which he represents to attend a meeting of the Board. The cases of deputization shall not exceed two in one meeting.

Article 14: If a member of the Board has a direct or an indirect interest in a Tender laid before the Board, he must disclose such interest to the President of the Board and withdraw from participating in the Tender resolution.

In all cases, a member of the Board shall withdraw from the resolution of the Tender, if he or one of his relatives up to the second degree is submitting the tender laid before the Board, or owns a share in such tender, or is a member of the board of directors of the company submitting the tender or an employee, agent or sponsor of such company.

Article 15: As an exception to the provisions of Article 8 of this Law, an internal committee in the relevant unit presided by the head of such unit or whoever is authorized by him shall exercise the powers of the Board in relation to Tenders the value of which does not exceed two hundred and fifty thousand Omani Rials.

The head of the relevant unit may form subsidiary Tender committees in the directorates general, directorates or offices subordinate to such unit in governorates and regions, to be chaired by the directors general or employees in charge of these directorates and offices. Such committees shall exercise the powers of the Board in relation to Tenders, works and services the value of which does not exceed fifty thousand Omani Rials. The decision of the subsidiary committee shall be final if the value of the Tender does not exceed ten thousand Omani Rials. It shall submit its recommendations to the head of the relevant unit if the value exceeds that limit.

The relevant units shall send to the Board copies of analyses and decisions relating to the award of contracts in Tenders in respect to which they may invite tenderers, publish notices and open envelopes.

PART THREE

Public Tender

Article 16: A Public Tender means the total procedures published pursuant to the provisions set forth in this Law and its Implementing Regulations and shall be local or international.

An International Tender means a Tender in which international companies and organizations not registered in the Sultanate may participate.

A Local Tender means a Tender in which participation is limited to those registered in the Commercial Registry or any professional register which the Board decides in specific cases that their names shall be registered therein.

CHAPTER ONE

Pre-tendering Procedures

Article 17: The relevant unit shall with the assistance of its competent technical department specify the estimated costs of the supplies, works or services required in the Tender and submit such costs to the Board for guidance in comparing the prices quoted by the participants in the Tender.

Article 18: The Tender notice shall be published in a daily newspaper of wide circulation in Arabic and English in sufficient time before the date specified for provision of the required supplies, execution of works or provision of services, so that re-tendering may be possible if required. The notice may also be disseminated through electronic means and on the notice board at the Board or the relevant unit in Arabic and English.

The notice shall be published in the Official Gazette in the cases of Tenders the value of which exceeds half a million Omani Rials.

The Board may by a reasoned decision disregard publication contraventions if the public interest so requires.

Article 19: A period of at least forty days shall be fixed for submission of tenders in the Tender as from the date of publication of the first Tender notice. The Board may upon request of the relevant unit reduce this period provided that it shall not be less than fifteen days according to the cases set out in the Implementing Regulations and provided that the same shall not apply to Tenders relating to annual supplies except in the case of a re-invitation for tenders in respect thereof.

floating

Article 20: The validity of tenders, the samples of which do not require chemical analysis, shall be ninety days. In the case of Tenders the samples of which require chemical analysis, such period may be increased by such period of time as may be required for such analysis. Such period may also be reduced in the cases of annual supplies and urgent requirements and contracting works.

In all cases the period shall not be less than sixty days to be determined according to the nature of the Tender.

Article 21: No condition or clause of the general conditions in respect of which standard contracts are issued in the Sultanate shall be amended during an invitation for tenders, unless the Ministries of Finance and Legal Affairs approve such amendment.

Article 22: The Board may, with the approval of the Ministry of Finance, increase the percentage of advance payment and include that in the Tender conditions. The Board shall have the right to choose the tender which leads to reduction of price, provided that when tenders are being compared the current rate of interest shall be added to the value of tenders that are linked with advance payment until the actual payment date thereof.

Article 23: International companies and organizations which are not registered in the Sultanate may participate in International Tenders provided that they shall register in accordance with the rules in force in the Sultanate within thirty working days from the date on which they are notified of the success of their tenders.

CHAPTER TWO

Submission of Tenders

- Article 24:** The tender shall meet the conditions and the instructions set forth in the notices and Tender documents.
- Article 25:** A tender for supply of items to the relevant unit shall be compliant with the standard samples or approved specifications or drawings, which the tenderer should inspect, and submission of its tender shall be deemed to be an acknowledgment from its side of such inspection and that supply of items will be made accordingly.
- If the relevant unit does not have standard samples, the tenderer may be required to provide samples.
- The Supplies shall be according to the technical specifications notwithstanding that they are not compliant with the samples unless it is clear from the conditions of the Tender that the samples are intended to be complied with.
- Article 26:** Technical and financial offers shall be submitted in one envelope unless the Board decides, as the nature of each Tender may require, that the technical, financial or other offers should be submitted in separate envelopes.
- Article 27:** The results of opening the envelopes shall be announced immediately after they are opened by disseminating such results electronically and may also be published by any other means.
- Article 28:** If it appears to the Board that any tender is abnormally lower than the other tenders submitted, the Board shall be entitled to enquire of the tenderer the extent of its compliance with the conditions of the Tender and its capability of performing the contract.
- Article 29:** The Tender and notice of the award in case of acceptance shall be determined before the expiry of the validity period of the tenders. If that is not possible the relevant unit shall, at the appropriate time request the tenderers through the Board, to extend the validity period of their tenders for a reasonable period.
- Article 30:** If the notice of a Tender includes a request for provision of credit facilities, the tenders accompanied by such credit facilities shall be given consideration when priority of tenders is resolved. The Board may cancel the Tender if the submitted tenders are not accompanied by the credit facilities required for finance.
- Article 31:** Tenders shall be compared in order to choose the most advantageous tender in accordance with the criteria specified in the Tender documents.

If the relevant unit is of the opinion that one or more tenders should be eliminated it shall give reasons to support its opinion and the Board shall not be bound when awarding the contract to accept the lowest or any other Tender.

Article 32: The Board shall communicate the result of the award of contract to the head of the relevant unit who shall in turn inform the winning tenderer one week at the latest from the date of approval of the result, unless the tenderer has specified a longer period in its tender, in which case notification shall take place within a sufficient time prior to the expiry of such period. The notice shall include a request for provision of the good performance bond or a professional indemnity insurance policy in the case of companies and consultancy offices, within the period specified in Article 44 of this Law. The notice shall also include a statement to the effect that the Government shall not be bound by the tender until the contract is signed.

* **Article 33:** No negotiations shall be entered into with any tenderer subsequent to the opening of envelopes, with the purpose of amending its tender, unless the lowest tender is accompanied by one or more reservations, and the value of the lowest tender, which is not accompanied by reservations, exceeds the value of the tender, which is accompanied by reservations.

Negotiations may be entered into with the lowest tenderer for the purpose of abandoning all or part of its reservations to the extent that its tender will become compliant with the conditions of the Tender as far as possible. In the event of its refusal, negotiations may be conducted with the second lowest tenderer provided that negotiations for the purpose of amendments shall not be conducted with any tenderer unless such amendment is refused by all lowest tenderers.

Article 34: Negotiations shall not be conducted in the cases set forth in Article 33 of this Law except in pursuance of a decision of the Board after consultation with the relevant unit. The results of negotiations shall be resolved by the Board.

Article 35: In the event that the prices of two or more tenders are equal, the Board may, after agreement with the relevant unit, divide the quantities for which tenders were invited among such tenderers if that is advantageous to the work. The same may also be done if the lowest tenderer requires long periods for the supply which are not suitable with the conditions of the work in the relevant unit.

Article 36: In tenders, preference shall be given to national products of small and medium industries which are compliant with the conditions and specifications. This preference includes preference of price within the limits of a 10% increase.

Article 37: The notice of a tender shall be repeated if only one tender is received notwithstanding that it is compliant with the conditions. A tender shall be

deemed to be one even though other tenders are received but are non-compliant with the conditions of the Tender.

If the notice of a Tender is repeated and only one tender is submitted, the Board may accept it upon request of the relevant unit. The period for submission of tenders may also be shortened by half where the notice of the Tender is repeated.

Article 38: As an exception to the provisions of Article 37 of this Law, the Board may, pursuant to the recommendation of the relevant unit, convert a Tender to Selective Tendering Procedures with the only tenderer who submitted, if the following two conditions are met:

- a) the urgency of work precludes a repetition of the notice of the Tender or the repetition of such notice is expected to be without purpose.
- b) the sole tender is compliant with the conditions and specifications and is suitable having regard to the price.

Article 39: Tenders may be cancelled by a reasoned decision of the Board, after publication of notice thereof and before a decision thereon is made if it is finally abandoned or the public interest so requires. The Board may also cancel a Tender pursuant to the recommendation of the relevant unit in any of the following cases if:

- a) only one tender is submitted or only one tender remains after the eliminated tenders;
- b) all or most of the tenders are accompanied by material reservations;
or
- c) the value of the lowest tender exceeds the market value.

Article 40: If the Tender is cancelled before the date specified for opening the envelopes, the price of the copy of the Tender documentation shall be refunded to the purchaser thereof on condition that the complete copy of the Tender documentation is returned to the Board.

If the cancellation of the Tender is effected subsequent to the date mentioned in the preceding paragraph, the price shall not be refunded except to that party which participated in the Tender.

Article 41: The Board shall eliminate a tender by a reasoned decision in any of the following cases:

- a) if the public interest so requires;
- b) if the tender is not compliant with the conditions and specifications;
- c) if the tenderer is not registered in the Sultanate with the exception of tenders submitted in International Tenders by international companies and corporations;

- d) if the tender is not accompanied by the initial bond in full
- e) if the tenderer does not provide evidence of the soundness of its financial position;
- f) if the tender documents are incomplete, unsigned or not stamped by the tenderer;
- g) if a final judgement is passed to the effect that the tenderer has become bankrupt, insolvent or that judicial proceedings have been commenced against it for the same reason;
- h) if the tender involves a violation of the provisions of Royal Decree No. 39/82 relating to the Protection of Public Property and Avoidance of Conflict of Interests.

Article 42: The relevant units shall have the right to issue variation orders within the validity period of the contract, to increase or reduce the period, value, kind, quantities or specifications of items, works or services, which are the subject of the contract, to the extent of a total value not exceeding one hundred thousand Omani Rials or 10% of the value of the original contract approved by the Board, whichever is greater, provided that the prices of the variation orders shall be the same prices approved by the Board.

For calculation of the cost of the variation orders their value shall be aggregated irrespective of whether they relate to increase or reduction of the subject of the contract.

If the variation order exceeds the limit provided in the preceding paragraph, the approval of the Board shall be obtained subject to the following:

1. availability of the necessary funds and agreement of the contractor to comply with the prices set out in the contract if such prices are still reasonable and do not exceed the market prices.
2. if the variation order includes addition of new quantities, items, constructions or services not provided in the contract but are relevant to its subject, they may be procured by Direct Order from the contractor.

CHAPTER FOUR

BONDS

Article 43: Every tender shall be accompanied by an initial bond which shall not be less than 1% of the total value of the tender. If the tenderer withdraws its tender before the expiry of the period specified for the validity of the tender, the initial bond shall be forfeited to the benefit of the Board without need to serve notice thereof or take any other proceedings.

The initial bond shall be returned to the unsuccessful tenderers, immediately after the expiry of the period specified for the validity of the tender, or before that, if the winning tenderer is declared or the Tender is cancelled.

The initial bond shall be returned to the successful tenderer when it provides the performance bond.

Article 44: The successful tenderer shall, within ten working days following its notification of the acceptance of its tender, deliver a performance bond in the amount of 5% of the total value of its successful tender, or a professional indemnity insurance in the case of companies and consultancy offices. In the case of contracts concluded with a party which is abroad, such bond shall be delivered within twenty working days.

The period specified in the two cases mentioned in the preceding paragraph, may with the approval of the head of the relevant unit be extended for an additional period not exceeding ten days.

Article 45: If the successful tenderer does not deliver the performance bond within the period specified in Article 44 of this Law, the Board may by written notice cancel the award and forfeit the initial bond without prejudice to the right of the relevant unit to damages.

Article 46: The successful tenderer shall be exempted from the performance bond, if it supplied the items contracted for and they were finally accepted by the relevant unit within the period specified for delivery of the performance bond.

CHAPTER FIVE
LIMITED TENDER

Article 47: Contracting may be effected by a Limited Tender in the cases the nature of which requires participation therein to be limited to specific suppliers, contractors or consultants whether in the Sultanate or abroad who satisfy the required conditions.

Article 48: An invitation shall be addressed to the suppliers, contractors and consultancy offices to prequalify for participation in the Limited Tender through a notice to be published in one of the means of publication in the Sultanate or abroad.

Approval of qualification of suppliers, contractors and consultancy offices shall be made by a decision of the Board.

Article 49: The invitation addressed to suppliers, contractors or consultancy offices whose qualification for participation in the Limited Tender is approved, shall be effected by official letters or electronic means.

The procedures and rules applicable to the Public Tender shall apply to this Tender.

PART FIVE
SELECTIVE TENDERING PROCEDURES

Article 50: Purchase of items or execution of works may be effected by means of Selective Tendering Procedures through negotiations for obtaining the best offers at the lowest prices in special cases or in any of the following cases:-

- (a) items the production or importation of which is monopolised, or whose nature or where the purpose of procuring them requires that they should be purchased from the places of their production, or which cannot be found except with a specific person.
- (b) items for which accurate specifications cannot be made.
- (c) technical and consultancy works or services that require a specific technical know-how or specialisation.
- (d) animals and poultry of all kinds.
- (e) supplies, works and transport and provision of services contracts where circumstances of extreme urgency require that the Tender procedures should not be followed in respect thereof.

- (f) supplies, works and transport and provision of services contracts for which no tenders were submitted in the Tenders thereof, or that tenders were submitted but their prices were not acceptable and the need therefor precludes repetition of Tender procedures.
- (g) execution of works and provision of services carried out by the relevant units outside the Sultanate.
- (h) purchase and leasing of real property.

Article 51: The Selective Tendering Procedures shall be undertaken by a committee to be formed by the Board under the presidency of one of its members and membership of the Secretary General of the Ministry of Finance, a representative of the relevant unit and a specialised official whose post and technical expertise are suitable for the importance and type of the Tender.

As an exception to the provisions of the preceding paragraph Tenders relating to the business of the Ministry of Foreign Affairs conducted outside the Sultanate shall be undertaken by a special committee to be formed as follows:-

- The Undersecretary of the Ministry of Foreign Affairs – president.
- A representative of the Ministry of Finance – deputy president.
- A representative of the Ministry of National Economy – member.
- The Head of the Directorate of Projects and Property at the Ministry of Foreign Affairs – member.
- The Deputy Head of the Directorate of Projects and Property at the Ministry of Foreign Affairs – reporter.

Article 52: The relevant units may purchase their requirements and execute their projects by the method of Selective Tendering Procedures in the cases set forth in Article 50 of this Law provided that the value in each case shall not exceed one hundred thousand Omani Rials without prejudice to Royal Decree No.48/76 relating to the Signing of External and Internal Financial Transactions.

The Selective Tendering Procedures Committee in the relevant units shall be formed under the chairmanship of the undersecretary or whoever legally acts for him, and the membership of two specialised officials whose posts and technical expertise are suitable for the importance and type of the Tender.

Article 53: A supplier shall be exempted from delivering the initial bond if it supplied the items intended to be purchased and they were finally accepted by the relevant unit upon completion of contracting.

PART SIX

CONTRACTING BY DIRECT ORDER

- Article 54:** The Board may in special circumstances enter into contracts by Direct Order for execution of works or procurement of technical or consultancy services or supply of items or requirements.
- Article 55:** The relevant units may enter into contracts by Direct Order with governmental units, corporations and companies for execution of works or procurement of technical or consultancy services or supply of items or requirements. They may also, subject to the approval of their heads, enter into a contract by Direct Order with a supplier, contractor or consultancy office the value of which does not exceed ten thousand Omani Rials, provided that the prices are reasonable and the reasons requiring that choice are stated.
- Article 56:** The relevant units may, in the event of necessity, and subject to the approval of their heads, enter into contracts by Direct Order with a supplier, contractor or consultancy office, the value of which does not exceed twenty five thousand Omani Rials, provided that the prices are reasonable and the reasons requiring that choice are stated.

PART SEVEN

COMPETITION

- Article 57:** Competition is a special method of contracting for carrying out studies, designs, drawings, models or other works of art required for a specific project.
- Article 58:** The relevant unit shall specify the objects, scope and detailed specifications of the project, the prizes, rewards and compensations that will be awarded to the winners, accrual of ownership of the successful and unsuccessful reports, studies, designs and drawings and any other conditions as the relevant unit may deem fit.
- Article 59:** Invitation for participation in the Competition shall be either through publication of notice by electronic means or by means of direct invitation for those who have the expertise and skills required for the project or purpose which is the subject of the Competition.
- Article 60:** The Board shall, after co-ordination with the relevant unit, form a committee of a number of persons specialised in the subject of the Competition for studying the submitted offers. Such committee may call the participants and discuss with them what they submitted.
- Article 61:** The committee shall record its proceedings in a minute book in which it shall mention the submitted offers, the opinions and criteria adopted for comparison between the offers, its recommendations for choosing the successful offerors and the order of the other offers and submit the minute book containing such recommendations along with the offers attached therewith, to the Board for decision.
- Article 62:** The provisions of Chapter IV of Part III of this Law shall not apply to the Competition.