

LAW NO. 37 OF 1964

GOVERNING PUBLIC TENDERS

WE, JABER AL AHMAD AL JABER, Deputy Amir of Kuwait, after having persued Articles 61, 65 and 135 of the Constitution and following the approval of the National Assembly, have ratified and issued the following Law :-

Article (1)

A Public Tenders Committee shall be set up with the title "Central Tenders Committee" ascribed thereto and shall be attached to the Council of Ministers.

This Committee shall receive and decide public tenders and shall award such tenders to the most suitable tenderer in the light of the procedure outlined herein.

Article (2)

Ministries and Government Departments shall not import commodities and/or commission contractors to carry out some works except by way of public tender through the Central Tenders Committee specified in the preceding Article.

A public tender could be restricted for participation by contractors whose names are approved in lists prepared by the authorities concerned and approved by the Central Tenders Committee. All provisions governing public tenders shall apply to restricted tenders (the foregoings excepted).

Article (3)

{Modified by the Law No. 81/77}

Excepted from the provisions of the preceding article, a Government authority could independently import commodities and/or commission the execution of works directly or by way of tender and not through the Central Tenders Committee if the value of the contract is not excess of K.D. 5,000/- (modified by Law No. 81/77). Such a contract shall not be concluded to cover the same commodities or works more than once in one calendar month.

Also, one transaction shall not be parcelled into several monthly deals, the value of each being within the limits of K.D. 1,000/-.

The Central Tenders Committee shall, if the value is in excess of the limit outlined in the preceding paragraph, allow a Government authority to import a commodity and/or to commission the execution of work by direct labour if it is deemed in the public interest because of the type of goods or the nature of the required works or the urgency, etc.... The Central Tenders Committee shall also permit Government concerns to directly purchase local products, providing the serviceability of the

specifications if being ascertained and providing the cost thereof is not more than 10% higher than the lowest cost of similar imported products.

A permit shall be issued on the strength of a memorandum sent by the Government authority applying for such.

Article (4)

The Central Tenders Committee shall be constituted as follows :-

- (a) 6 members appointed for a term of two years by a Decree from the Council of Ministers, subject to re-appointment.
The Council of Ministers shall fix their remunerations and shall appoint a Chairman and a Deputy Chairman to the Committee from amongst the said members.
- (b) A representative from the Ministry of Finance.
- (c) A representative from the Legal Department.
- (d) A representative from the Planning Board.
- (e) A representative from the Government Authority for which the tender has been let.
- (f) A representative from the Government Authority which will supervise the execution of the tender.

Quorum at Central Tenders Committee meetings shall not be there unless six members, at least, are present, and which should include the Chairman or the Deputy Chairman and the representative of the Legal Department.

Article (5)

A tenderer participating in public tenders shall have to meet with the following pre-requisites :-

- (1) He shall have to be a Kuwaiti merchant - whether an individual or a firm registered with Kuwait Commercial Registry and Kuwait Chamber of Commerce and Industry.

He could be a foreigner provided he has a Kuwaiti merchant acting as a partner or agent established by an official authenticated contract and providing the Central Tenders Committee drafts special statutes for the participation of foreign companies in tenders for major projects.

- (2) He shall have to be registered in the category list of approved contractors or suppliers as per the provisions of the hereinafter mentioned articles.

Article (6)

The Secretariat of the Central Tenders Committee shall prepare a registration list for suppliers applying for registration. Those to be entered in the importers list shall have to meet the pre-requisites specified in paragraph (1) of the preceding Article.

Article (7)

The Central Tenders Committee shall entrust the matter of classification of contractors for public tenders to a Committee comprised of :-

- (a) A representative from the Central Tenders Committee, elected by this Committee, as Chairman of the classification committee.
- (b) A representative from the Ministry of Public Works.
- (c) A representative from the Ministry of Communication / Posts, Telephones and Telegraphs.
- (d) A representative from the Ministry of Electricity & Water.
- (e) A representative from the Ministry of Finance.

The Central Tenders Committee shall appoint a Secretary to the Classification Committee. The Committee could, in the course of its work, make use of the services of technicians and experts of the various State Establishments.

Article (8)

The Classification Committee shall classify the contractors in the following categories:-

Category - 1 : Shall be formed of contractors who are able to carry out major constructional projects of high engineering standards, the initial cost of which being in excess of K.D. 1 Million.

Contractors in this category could participate in all types of public tendering within the limit of K.D. 5 Million unless the value of a tender let exceeds this amount. However, this category of contractors shall not participate in tenders worth less than K.D. 500,000/-.

Category - 2 : Shall be formed of contractors whose technical and financial potentialities permit their participation in tenders worth not in excess of K.D. 1 Million .

The contractors under this category shall not be permitted to simultaneously execute (several) jobs in the total value of the remaining works is in excess of K.D. 1 Million.

Category - 3 : Shall be formed of local contractors who are allowed to participate in tenders, providing the total value of the works they are simultaneously executing is not in excess of K.D. 500,000/-.

Category - 4 : Shall be formed of local contractors who are allowed to participate in tenders, provided the total of works executed at the same time is not worth in excess of K.D. 250,000/-.

Article (9)

The Classification Committee shall have the contractor registered in the category conforming to his financial and technical status and the jobs previously executed by him, and shall have to issue its decision within one calendar month from the date of application for classification. Any application shall be considered rejected unless a decision has been issued by the Committee within the said period.

The Committee shall notify the applicant in respect of its decision within one week of its issue. The applicant could appeal to the Central Tenders Committee in respect of the decision given by the Classification Committee rejecting his registration or enjoining his classification under a category inferior to the one applied for. The decision of the Central Tenders Committee in this respect shall be final.

Article (10)

A contractor shall not be permitted, unless he is a category 1 contractor, to enter in general contracts, worth in total in excess of the ultimate permissible limit. Also, no tenders shall be awarded to him if the value of the said contracts added to the value of the works yet to be completed at the time of opening the tender, be in excess of the maximum permissible figure, taking into consideration the provisions of Article 8.

Article (11)

Not one person, or a group of persons, shall be permitted at the time of classification to register under more than one name and/or to submit more than one bid per tender, excepting alternative offers where the conditions of the tender so permit.

As for a person having shares in separate companies being independent in finance (body corporate), engineers, staff and general administration set up, such a person could, upon classification, have himself registered although each of his independent companies might have been registered.

Article (12)

A contractor, after a lapse of one year following classification, could apply to the Classification Committee for reconsideration of the category he is registered under and to upgrade him to a higher category. A decision given by the committee in this respect is subject to appeal before the Central Tenders Committee whose decision shall be considered final.

A contractor, upon the ending of each year, could reiterate this request. Such requests for reconsideration of classification shall be subject to provisions of Article (9) hereof.

Article (13)

The Government shall not be responsible for establishing special (letters of credit) / (allocating special provisions) for importing commodities from abroad unless this is deemed necessary under the circumstances, by the Government authority concerned and unless such has been specified in the tender conditions.

Article (14)

The Government authority concerned, prior to letting a public tender for the supply of a commodity or for the execution of works, shall make a draft detail specification about each and every Article or work, giving the necessary instruction to the contractors, complete detail drawings, accurate detailed bills of quantities showing unit items, procedure to be followed in carrying out the contract and the penalties liable to be imposed in the event of a violation to the provisions of the contract and/or in the event of delay in execution, as well as the form of tender and the general conditions of contract.

Article (15)

The Central Tenders Committee, on the strength of the request made by the Government authority concerned, shall advertise the tender in the Official Gazette and shall post the relative bills at the main office of the Central Tenders Committee. The Committee shall define the appropriate lapse for returning the tenders from the date of the advertisement run in the Official Gazette.

The minimum possible period for validity, after the tenders are opened, shall be specified, so that such will not be in excess of 90 days.

Article (16)

The advertisement shall show the date and time for the return of the tender, the validity period, the product to be supplied and/or the work to be executed, the cash fees per copy of the terms and conditions of tender and the authority to which the tenders are to be submitted. The authority shall be the main office of the Central Tenders Committee.

Article (17)

The tender documents which include the terms and conditions of tender, bills of products or works, etc... shall be prepared before the tender advertisement is published, so that these could be handed over upon request to any party after paying the scheduled cash fees to the authority specified by the Central Tenders Committee.

Article (18)

The Government authority requesting a restricted tender shall produce a list of contractors to which the tender shall be confined and shall offer such list to the Central Tenders Committee with a view to directing an invitation for participation.

Article (19)

The Central Tenders Committee shall notify the Government authority connected with the tender and shall forward a copy of the official gazette in which the advertisement has been run, to the latter authority.

Article (20)

A tenderer shall neither be a member of the Central Tenders Committee nor an official of the Government authority requesting the tender. The term "Tenderer", in applying the provisions of this article, shall cover the partner, agent (client), official and member of the Board of Directors of the tendering firm or establishment.

Article (21)

Tenders shall be submitted in the official tender documents issued to tenderers.

All tender documents shall be considered personal by the tenderers who obtain them and shall not be transferable to others.

Article (22)

Tenders shall be returned duly filled in and completed in all aspects according to the conditions outlined in the tender documents and in exact conformity with the implications of such documents. The tenderer shall not effect any alteration (Lit: amendment) in the tender documents.

Any tender invitation of these provisions shall be considered null and void unless the committee unanimously agrees to entertain it on account of considerations bearing on the public interest.

Article (23)

Should the tender documents permit submitting alternative offers and should the tenderer be desirous of submitting one or more alternative offers, then he shall have to obtain a further set of official tender documents for each alternative offer, and shall have to legibly insert on each set of documents to the effect that the said represents an alternative offer.

Article (24)

Pricing of all tenders shall be in the official currency, unless it is otherwise specified in the tender documents. The total sum shown in the form of the tender shall be the figure considered by the Central Tenders Committee regardless of any figures which might appear in the general summary or which might occur in any other place in the tender documents. This is also regardless of any errors which the tenderer might commit whilst calculating his total sum. The tenderer shall not be permitted to effect any amendment to the said sum after handling in his tender.

In the event that the arithmetical error exceeds 5% of the total sum, the tender shall be ruled out unless the committee unanimously approves the said for considerations bearing on the public interest.

In the event of a discrepancy between the sum inserted in words and that in figures, then the Central Tenders Committee shall consider that which is the lowest.

Article (25)

Tenders shall not be accepted unless fixed total prices are shown.

Article (26)

The tenderers shall return the tender documents at the time and date specified and in the method prescribed in such documents.

The documents shall be delivered in the respective official envelopes, duly sealed with sealing wax. The name of the sender shall neither be shown nor shall any mark or reference identifying the sender be affixed. Torn, damaged or mutilated envelopes shall not be accepted.

In the event of the official tender envelop being damaged, misplaced or mutilated, the tenderer shall have to secure another replacement envelop in order to submit his tender. Otherwise, the tender shall not be entertained unless the committee unanimously decide to accept it on account of considerations bearing on the public interest.

Article (27)

The tenderer shall have to deposit with his tender (attached to the form of tender) the initial guarantee in the form of an approved cheque or a letter of guarantee from a local bank or an insurance company approved by a local bank.

The guarantee shall remain valid to cover the duration of the tender.

Neither cash guarantees nor unapproved cheques shall be entertained.

Article (28)

When the successful tenderer submits the final guarantee and signs the contract, the initial guarantee would be refunded to the unsuccessful tenderers.

Article (29)

In case where the tender documents specify submitting samples of the goods or products, the tender shall not be acceptable unless accompanied by the required samples or by a receipt against delivery of the samples to the authority specified in the conditions of tender.

In the event of (a tenderer) supplying local products requiring technical testing to establish suitability, specimens shall be submitted for testing and the results shall be forwarded to the Central Tenders Committee in the session scheduled for deciding the tender.

Article (30)

The tender shall remain valid and unretractable from the time of issue until the end of its validity. Any reduction in the rates will not be considered after the tender has been issued.

Article (31)

The public tender box shall be kept at the main office of the Central Tenders Committee. The size of the box shall be sufficient to hold the envelopes of all the tenderers and its slot opening shall be wide so as to permit depositing of envelopes and shall be of the type that does not permit retrieving the envelopes through the slot openings.

The box in question shall have three locks and the key of the first lock shall be kept by the Chairman of the Committee. The Deputy Chairman of the Committee shall keep the key of the second lock and the Secretary shall keep the key of the third lock. The tender box shall not be opened except when the committee is in session and when quorum is present.

Article (32)

The slot opening of the tender box shall be closed on the day and hour specified in the tender documents and shall be sealed with sealing wax until the seal is broken by the Tenders Committee.

Article (33)

Any tender received after the time set for closing the box shall not be entertained.

Article (34)

The tender box shall be opened in the meeting room of the Central Tenders Committee when the said committee is in session. If quorum is not present, the box shall not be opened and a report shall be drafted about the condition of the box to ascertain the soundness of the seals and to avoid depositing any further tenders. The meeting shall be adjourned and the members shall reconvene on the nearest possible date.

Article (35)

Upon opening the tender box, the Central Tenders Committee shall open all the tenders and enter the said in a schedule prepared for this purpose.

Article (36)

Tenders not accompanied by the initial guarantee specified in Article 27 hereof shall not be entertained.

Article (37)

In the event of any discrepancy or inconsistency being witnessed in the tender, the Central Tenders Committee shall decide acceptance or rejection according to the provisions outlined herein above.

Article (38)

All accepted tenders shall be referred to the competent Government authority so that the technical personnel will study the said and submit recommendations in connection therewith to the Central Tenders Committee within the period defined therefor.

The Committee may, in cases not requiring technical study, award the tender forthwith to the lowest tenderer.

Article (39)

The Central Tenders Committee may decide referring the accepted tenders to a special technical committee formed for the purpose. Such committee could independently study the tenders and/or could study such tenders with the Government authority concerned, as deemed appropriate by the Central Tenders Committee.

Article (40)

If the tender documents had been prepared by consulting engineers, such consulting engineers shall have to study the tenders and release recommendations in connection therewith and in collaboration with the Government authority concerned.

Article (41)

The recommendations of the authorities specified in the three preceding articles shall not be binding so far as the Central Tenders Committee shall decide the question of awarding the tenders regardless of any recommendations.

The committee's decision issued for awarding the tender contrary to the recommendations of the technical body heretofore referred to shall be by a majority of 2/3 of the members of which the committee is comprised.

Article (42)

The decision of the Central Tenders Committee shall be issued by the majority of the members present unless the law specifies otherwise.

Article (43)**{Modified by the Law No. 18/70}**

The Central Tenders Committee shall award (the tender to) the tenderer who submitted the lowest lump sum figure if his tender meets with the pre-requisites of the tender documents. Nevertheless, the committee could award the tender to a tenderer who submitted a higher bid if the sum of the lowest tenderer was unreasonably low and does not impart reassurance so far as the tenderer concerned.

With regard to tenders for supply, the Central Tenders Committee shall give the priority when awarding such tenders to lowest offer who is offering local products and complies with document requirements; provided that the price should not exceed than other lowest offer of similar products from abroad by 10% (ten percent).

The committee, prior to awarding a tender, shall have to ascertain the availability of adequate financial provisions to cover the value of the awarded tender.

Article (44)

If the Central Tenders Committee believes that a strong justification exists for preferring a tender who submitted a high price without the conditions in the preceding Article being met, this matter shall be referred to the Council of Ministers for a decision in connection therewith.

The Council of Ministers shall neither bind itself to accept the lowest price nor the technical recommendations without having to produce any reasons.

Article (45)

If upon checking the tender, it is found that unit rates and details do not conform to the total sum, then the total sum shall be considered, unless the error reflects an increase in excess of the total of the unit rates in which case the correct total shall be considered without prejudice to the provisions of Article 24 hereof.

Article (46)

If it is found upon verification that some of the unit rates are not reasonable, the committee - or technical personnel seconded by the committee shall amend the said together with the successful tenderer prior to awarding the tender to him and within the limit of the total figure of the tender.

Article (47)

Upon deciding a tender, the committee shall have to consult the latest rates previously applied, locally or abroad, as well as the prices ruling on the (local) market. Also, the committee - if it deems appropriate to annul the tender due to high rates - shall have to establish in its minutes the procedure adopted for determining the market prices.

Annuling of the tender shall be by a decision from the Council of Ministers on the strength of a recommendation released by the Central Tenders Committee.

Article (48)

The tender shall be relet if only one bid is received for some or all the products or works although it might be in fulfilment of the requirements. A tender shall be considered a sole tender if received together with other tenders contrary to the conditions or not meeting with the requirements which disqualify entertaining. Nevertheless, in the event of urgency, a sole tender could be accepted by virtue of a decision issued with the approval of 2/3 of the Central Tenders Committee members.

Article (49)

If only one tender is submitted after the tender has been relet the Committee shall discuss its rates and suitability and give a decision in respect thereof.

Article (50)

If two or more tenderers have shown even rates, the Committee could divide the quantities advertised between the parties who submitted even rates, provided they are agreeable to this and provided such a procedure is not detrimental to the work's interest. Otherwise, lots will be casted.

Article (51)

The Tenders Committee shall notify the successful tenderer, documentally, regarding the acceptance of his tender and a copy of such letter shall be forwarded to the Government authority concerned.

Article (52)

Awarding the tender and notifying the successful tenderer respectively shall not entitle the contractor to any rights from the State, in the event of retracting the awarding of the tender by virtue of a decree of the Council of Ministers and as per the provisions hereof. The tenderer shall not be considered under contract except from the date on which signature is affixed on to the contract referred to in the following Article herein

Article (53)

The Government authority letting the tender (employer) shall ask the successful tenderer to present himself for signing the contract with the lapse specified. If the contractor fails to present himself within the said lapse for concluding the contract, he shall then be considered withdrawn.

Article (54)

The successful tenderer shall be requested - prior to signing the contract - to present the final guarantee to the Government authority concerned. Failing to present such a

guarantee, he shall be considered withdrawn. The final guarantee shall remain valid for the whole duration of execution of the contract.

The Tenders Committee shall assess the final guarantee to be provided.

Article (55)

If the successful tenderer fails to present himself for signing the contract within the lapse defined and/or if he fails to provide the final guarantee or withdraws for any other reason, without presenting a reason acceptable to the Central Tenders Committee, he shall then forfeit his initial guarantee and shall be liable to any other penalty imposed by the Committee, e.g., crossing his name off the list of approved contractors and suppliers permanently or for a certain period.

The tenderer reserves the right to appeal the decisions indicated in the preceding paragraph to the Council of Ministers.

Article (56)

In the event of the withdrawal of the successful tenderer, the Central Tenders Committee shall consider, on the strength of the request of the Government authority concerned, the question of annulling the tender, reletting and/or awarding the same to the second lowest tenderer as per the provisions hereof.

Article (57)

The penalties to be imposed by the Central Tenders Committee on contractors and suppliers shall be as follows :-

- (a) Serving a warning
- (b) Reducing the category
- (c) Removal from the approved list permanently or for a certain period.

These penalties shall not prejudice the contractual rights of the contracted Government authority as per the contract conditions.

Article (58)

The committee shall issue its decision exacting appropriate penalty (to fit the contractor's offence) after calling the contractor and hearing his defence. The absence of the contractor shall not hinder issuing the decision.

A contractor against whom a penalty had been issued could appeal against such a decision to the Council of Ministers as per the provisions of Article 62 hereof.

Article (59)

Until classification of contractors and registration of suppliers have been completed in the light of the provisions of Article 8 and 9 hereof, the ruling classification in State Ministries, each within the scope of its jurisdiction, shall apply.

The Central Tenders Committee shall define the period during which the provisions specified in the preceding paragraph shall remain valid, providing such a period shall not be in excess of six months from the date of the constitution of such a committee.

Article (60)

The Tenders Committee shall advertise the tender prices on the notice board and its main office where the tender envelopes were opened. All the decisions of the Central Tenders Committee shall be published in the Official Gazette, unless the Committee decides to defer publishing such decisions.

Article (61)

The Central Tenders Committee shall have a Secretary appointed by a Decree from the Council of Ministers.

Article (62)

Any party concerned could appeal to the Central Tenders Committee against decisions issued by the latter and the Committee shall convene to urgently discuss such complaint. If half of the members present believe that the complaint has any grounds, the matter shall be referred to the Council of Ministers for a peremptory decision.

Article (63)

The Central Tenders Committee shall prepare the general conditions for contractors for works and supply and shall, at its discretion, commission any authority with a view to drafting these conditions.

Article (64)

Amendments in excess of 5% of the total value of the tender shall not be introduced, as an increase or decrease, except with the concurrence of the Central Tenders Committee.

Article (65)

Purchase of military equipment for the Ministry of Defence and Security Forces which are defined by a Decree are exempted from the provisions of this law. This exemption also applies to contracts of military installations in emergencies.

Article (66)

The Ministers - each by virtue of the authority vested in him - are to implement this law which shall be in force from the date of publication in the Official Gazette.

[Signed]

**JABER AL AHMAD AL JABER
DEPUTY AMIR OF THE STATE OF KUWAIT**

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