TENDER LAW IN OMAN

Introduction

Since 1984 Oman has had a law requiring certain entities to go out to tender in respect of significant procurement projects. The objective of the law is to ensure that the State gets value for money in its procurement and the process is undertaken on a fair and open basis. The current law, which was drafted by SASLO lawyers, is Royal Decree 36/2008, as amended by Royal Decree 120/2011 and RD 60/2013. The implementing regulations contemplated by that law have been issued by Decision 29/2010.

Given these legislative changes, and the interest of overseas companies in tendering for projects in Oman, this is an appropriate time for us to send you a summary of the legislative framework for tendering.

Legislative Scheme

The legislation establishes a “Tender Board”, the members of which are appointed by the Government, and which is supported by a Government appointed secretariat.

The functions of the Tender Board are wide reaching, but are centered upon –

- reviewing and ensuring the accuracy and efficiency of invitations to tender;
- determining the method of invitation for tenders;
- receiving tenders, evaluating them and taking award decisions; and
- maintaining registers of suppliers, contractors and consultants and classifying them.

The legislation applies to the units of the administrative apparatus of the State and the public authorities and organisations which are expressly excepted from its provisions. The legislation also applies to companies that have independent legal entities and wholly owned by the Government until the tender regulations of such companies have been issued after coordination with the relevant authorities. In the meantime the Internal Tender Committees in such companies shall exercise the functions of the Tender Board. Thus, for example, all the companies in the electricity sector, which has been “unbundled” into its constituent parts, are wholly Government owned and can exercise the functions of the Tender Board through their Internal Tender Committees until their own tender regulations are issued.
An important exception to the requirement to go out to tender through the Tender Board is where the value of the proposed tender does not exceed RO 1,000,000 (USD 2,600,000). In this circumstance the unit concerned exercises the functions of the Tender Board through its own, internal tender committee. Further devolution to subsidiary tender committees of the unit is possible where the value of the proposed tender does not exceed RO 50,000 (USD 130,000).

There are two broad categories of tenders: “International Tenders”, in which foreign companies may participate, and “Local Tenders” in which participation is limited to local companies. The phrase “Public Tender” is used to describe both International and Local Tenders.

The detailed procedures for tendering through the Tender Board are outside the scope of this note. Nonetheless there are one or two points which should be noted:
- Tenders normally require the posting of a tender bond and, in the case of a successful tenderer, a performance bond issued by a bank registered in Oman or, in the case of a consultancy, a professional indemnity insurance policy;
- some tenders (including International Tenders) are “limited Tenders”, where the nature of the tender is such that it must be restricted to a few suppliers. These will be required to pre-qualify;
- where a tender is from a foreign company, the tenderer must give an address in Oman through which communications can be made;
- the regulations prescribe detailed requirements for delivery of tenders (unless e-mail is permitted) and for the opening of tenders in the presence of the bidders; and
- all tendering must be conducted in Omani Rials (which has a fixed exchange rate to the US dollar; the fixed rate is USD 2.6 = RO 1).

There are many pitfalls for prospective tenderers in the public tendering process. The most important thing is to ensure compliance – any failing in this respect will immediately invalidate the tender.

With its very wide experience of advising clients in tendering, SASLO offers –
- review and advice on the tender documentation at the pre-bid stage;
- advice to tenderers on the tender process and their rights under that process;
- advice to tenderers, whose rights under the laws and regulations may have been infringed, on the possible courses of action to take;
- assistance to successful tenderers in setting up operations in Oman, for example assistance with establishment of a corporate entity and obtaining any necessary licenses; and
- providing support and advice to successful tenderers on the post bid stage.

Anyone who seeks assistance in respect of tendering in Oman should contact Said Al Shahry (sbs@saslo.com) or Ahmed Subai (aos@saslo.com).