

FEDERAL LAW
NO. 97-FZ OF MAY 6, 1999
ON TENDERS FOR THE PLACEMENT OF ORDERS FOR THE SUPPLY OF GOODS,
PERFORMANCE OF WORKS, PROVISION OF SERVICES FOR STATE NEEDS

Adopted by the State Duma April 7, 1999
Approved by the Federation Council April 22, 1999

The present Federal Law governs the relationships occurring between the organizer of tender (state customer) and participants in the tender (suppliers, contractors) in the course of holding a tender for the placement of orders for the supply of goods, performance of works, provision of services for state needs.

The state customer shall place orders for the supply of goods, performance of works, provision of services (hereinafter referred to as "supply of goods (works, services) for state needs" by means of holding tenders except as otherwise provided by the legislation of the Russian Federation.

Chapter I. General

Article 1. The Applicability of the Present Federal Law

1. The present Federal Law shall be applied in the event when tenders are held for the placement of orders for the supply of goods (works, services) for state needs (hereinafter referred as "tenders").

2. The peculiarities of conducting tenders for the placement of orders for construction works for state purposes, the delivery of fuel for state purposes, the purchase and delivery of agricultural products, raw materials, foodstuffs for state needs as well as the delivery of fuel and foodstuffs for state purposes to the Extreme North areas and the areas qualifying as such may be provided by other federal laws.

Article 2. The Basic Terms Used in the Present Federal Law

The following basic terms are used in the present Federal Law:

"state needs" means the needs of the Russian Federation for goods (works, services) met at the expense of the resources of the federal budget and non-budget financing sources;

"state contract" means an agreement for the delivery of goods (works, services) for state needs entered into by a state customer and the winner in a tender in compliance with the legislation of the Russian Federation;

"tender" means a method for selecting a supplier (contractor) of goods (works, services) for state needs providing the best terms for the performance under a state contract;

"the organizer of tender" means a state customer as represented by a federal body of executive power as well as a legal entity to which the state customer has transferred on the terms of the agreement a part of its functions of holding the tender;

"bidder" means a supplier (contractor) pursuing the entrepreneurial activities of producing goods (works, services) that has filed an application for participation in the tender.

Article 3. The Legislation of the Russian Federation Applicable to Tenders for the Placement of Orders for the Delivery of Goods (Works, Services) for State Needs

Relationships occurring between the organizers of tenders for the placement of orders for the delivery of goods (works, services) for state needs and bidders in such tenders in the course of holding the tenders are governed by the Civil Code of the Russian Federation, the present Federal Law, other federal laws and other regulatory legal acts of the Russian Federation.

Article 4. Monitoring the Conduct of Tenders and Coordinating Tenders

1. The monitoring of the conduct of tenders and the coordination thereof shall be performed by a federal body of executive power authorized by the Government of the Russian Federation (hereinafter referred to as "authorized federal body of executive power").

2. The functions of the authorized federal body of executive power shall be defined by the Government of the Russian Federation in compliance with the present Federal Law and other regulatory legal acts of the Russian Federation.

Article 5. Bidder Qualification

1. Only a supplier (contractor) having the production facilities, equipment and labor resources required to produce goods (works, services) qualify as a bidder.

The organizer of tender is entitled to set additional requirements to bidders for each tender.

2. The organizer of tender is entitled to demand from bidders that they present information of their being in compliance with the qualifications set by the organizer of tender.

3. The requirements to bidders set by the organizer of tender shall be applicable to all participants in the tender and they shall be contained in the tender documentation.

4. The organizer of tender must dismiss a bidder to prevent him from participating in the tender at any stage of the tender if the bidder provide unreliable information on the bidder's compliance with the requirements set by the organizer of tender.

Article 6. The Participation of Foreign Suppliers (Contractors) in a Tender

Foreign suppliers (contractors) of goods (works, services) may take part in a tender in the event when the production of goods (works, services) for state needs is not available or is not economically feasible in the Russian Federation.

Article 7. Exchange of Information between the Organizer of Tender and Participants in the Tender

1. Exchange of information between the organizer of tender and participants in the tender shall be effected in writing in compliance with the present Federal Law.

2. Exchange of information between the organizer of tender and participants in the tender as provided under Item 6 Article 11, Item 2 Article 17 and Item 2 Article 20 of the present Federal Law may be carried on by the means that do not provide the content of the information in writing, provided they are later confirmed in writing.

Article 8. The Minutes of Tender

1. While holding a tender the organizer of tender shall keep minutes of the tender wherein the following shall be provided:

a) a brief description of the goods (works, services) to be supplied;

- b) the names and addresses of bidders;
 - c) a list of the bidders who failed the preliminary selection (if such a selection has been made);
 - d) the prices of goods (works, services) offered by the bidders;
 - e) the name of the winner in the tender and the prices of the goods (works, services) to be delivered by the bidder;
 - f) the grounds for the organizer of tender's decision to dismiss applications for participation in the tender under the present Federal Law;
 - g) the reasons why the state contract has not been signed;
 - h) the information stipulated under Item 2 Article 9 of the present Federal Law.
2. Upon the completion of the tender the information specified under Subitems "a", "b" and "e" of Item 1 of the present article shall be provided to the suppliers (contractors) which have acquired the tender documentation on their request.
3. Upon the completion of the tender the information specified under Subitems "a" - "g" of Item 1 of the present article shall be provided to the bidders on their request.
4. The organizer of tender is not entitled to provide information constituting a service or commercial secret.

Article 9. The Kinds of Tenders

1. The organizer of tender shall do the placement of orders for the supply of goods (works, services) for state needs by means of public tenders (including two-phase tenders) and closed tenders (including twophase tenders). The most preferable kind of a tender is a public tender.
2. The minutes of tender shall contain grounds for the organizer of tender's decision as to the selection of the kind of tender.

Article 10. The Anti-Monopoly Regulation of Tenders

The relationships occurring between the organizer of a tender and participants in the tender in the course of the tender that affect competition on commodity markets are governed by the anti-monopoly legislation.

Chapter II. Holding a Public Tender

Article 11. The Preliminary Selection of Bidders in a Public Tender

1. The organizer of a public tender is entitled to conduct a preliminary selection of bidders (hereinafter referred to as "preliminary selection") as aimed at looking for suppliers (contractors) being in compliance with the requirements to bidders in the public tender set by the organizer of the public tender.
2. The organizer of the public tender shall publish a notice of the preliminary selection in the mass media including the official publication of the authorized federal body of executive power.
3. The notice of the preliminary selection shall contain information on:
- the name of the organizer of the public tender and the place where the preliminary selection is going to be performed;
 - the kind and quantity of the goods to be delivered and the delivery destination, the kind of works and place where they are going to be performed, the kind of services and the place where they are going to be provided;

the term of the delivery of the goods (works, services);
requirements to the bidders in the public tender as set by the organizer of the public tender;
the procedure and place where documentation on the preliminary selection is to be obtained;
the rate of the fee charged by the organizer of the public tender for the documentation on preliminary selection, if any;

the procedure and term for the suppliers' (contractors') paying for the documentation on preliminary selection, if any;

the procedure, place and term for filing applications for participation in the preliminary selection.

4. The organizer of public tender shall provide documentation on preliminary selection to each supplier (contractor) asking for such documentation and making payment for the documentation on preliminary selection, if any such payment is required. The charge for the documentation on preliminary selection shall not exceed the expenses of the organizer of public tender incurred to produce the said documentation and deliver it to suppliers (contractors).

5. The documentation on preliminary selection shall contain the following:

instructions for the preparation of applications for participation in the preliminary selection;
the terms and conditions of the state contract;

information on the procedure, place and term for filing applications for participation in the preliminary selection;

requirements to the bidders in the public tender as set by the organizer of public tender.

6. The organizer of public tender shall reply to an inquiry by a supplier (contractor) insofar as it concerns the clarification of the provisions of the documentation on preliminary selection, received not later than ten days prior to the deadline date for filing applications for participation in the preliminary selection. The public tender organizer's reply in writing to the supplier's (contractor's) inquiry shall be mailed within a term allowing the supplier (contractor) to file timely application for participation in the preliminary selection.

7. The organizer of public tender shall determine whether or not the suppliers (contractors) meet the requirements to the participants in the public tender set by the organizer of public tender and shall make decision in respect of every supplier (contractor) who has filed an application for participation in the preliminary selection.

8. The organizer of public tender shall within three days notify of the results of the selection each of the suppliers (contractors) who have filed an application for participation in the preliminary tender. The right to take part in the public tender shall have only the suppliers (contractors) who have passed the preliminary selection.

9. The organizer of public tender shall reply in writing to an inquiry of a supplier (contractor) who failed the preliminary selection of participants in the public tender, such a reply containing the reasons for the making of a respective decision.

Article 12. Notice of a Public Tender

1. A notice of a public tender shall be published by the organizer of public tender in the mass media including the official publication of the authorized federal body of executive power.

2. The notice of a public tender shall contain information on:

the name and address of the organizer of the public tender;

the time and place of the public tender;

the terms and condition of the state contract (information on the kind and quantity of goods to be delivered and the destination place of the delivery thereof, the kind of works and place of

the performance thereof, the kind of services and the place of the provision thereof and others);
the term of the delivery of the goods (works, services);
the requirements to the participants in the public tender as established by the organizer of public tender;
the procedure and place where the tender documentation can be obtained;
the rate of the fee charged by the organizer of public tender for the tender documentation, if any;
the procedure and term for payment for the tender documentation, if any, to be made by the bidders;
the procedure, place and term for filing bids in the public tender;
the term for signing the state contract.

Article 13. The Terms for Providing the Tender Documentation

The organizer of public tender shall provide the tender documentation to the suppliers (contractors) who have passed the preliminary selection, if any such selection has been made, and have paid a fee for the tender documentation, if any such fee has been charged. The charge for the tender documentation shall not exceed the expenses of the organizer of public tender incurred to produce the said documentation and deliver it to the suppliers (contractors).

Article 14. The Content of Tender Documentation

The tender documentation shall contain the following:
instructions for the preparation of bids for participation in the public tender;
requirements to the bidders in the public tender as established by the organizer of the public tender;
requirements to the bids in the public tender;
the terms and conditions of the state contract (the description of goods (works, services), information on the quantity of the goods, on the provision of accompanying services, on the place where the works are to be performed or the services are to be provided, the term of the delivery of the goods, performance of the works or provision of the services and other);
requirements to the composition of the technical documentation for the goods (works, services) to be delivered as well as to the description of the delivered goods (works, services) to be provided by the bidders in the public tender;
the criteria whereby the organizer of the public tender is going to assess the bids in the public tender;
information on the procedure, place and term for filing bids in the public tender;
the methods whereby the provisions of the tender documentation are clarified;
the effective term of bids in the public tender;
information on the place, date and time of the opening of the envelopes containing the bids for the public tender;
information on the procedure for opening the envelopes and considering bids in the public tender;
other requirements as established by the organizer of the public tender.

Article 15. Clarifying the Provisions of Tender Documentation

Suppliers (contractors) are entitled to demand that the organizer of a public tender clarify the provisions of the tender documentation. The organizer of the public tender shall reply to any

inquiries by suppliers (contractors) received prior to the expiration of the public tender bid filing term asking for clarification of the provisions of the tender documentation. The organizer of the public tender shall forward to the suppliers (contractors) a clarification of the provisions of the tender documentation within a term allowing the suppliers (contractors) to file timely bids for participation in the public tender.

Article 16. Filing Bids for a Public Tender

1. The term for filing bids for participation in a public tender shall not be less than 45 days from the date of the publication of a notice of the public bid in the official publication of authorized body of executive power.

2. If the organizer of the public bid brings to the notice of the suppliers (contractors) the clarification of the provisions of the tender documentation or holds discussions with them concerning the tender documentation he can prolong, if necessary, the term for filing bids for participation in the public tender.

3. A notice of the prolongation of the bidding term of the public tender shall be forwarded to the suppliers (contractors) within three days.

4. The bid in a public tender shall be made in writing and submitted in a sealed envelope in accordance with the procedure stipulated by the organizer of the public tender in the tender documentation. The organizer of the public tender shall issue a receipt to acknowledge the receipt of the bid for participation in the public tender including the date and time of the receipt thereof.

5. The envelope with the bid for participation in the public tender received by the organizer of the public tender after the expiration of the public tender bidding term shall not be opened up and it shall be returned to the supplier (contractor) who has submitted it.

Article 17. The Effective Term, Amending and Recall of Public Tender Bids

1. Public tender bids shall be recognized as valid within a term set by the tender documentation.

2. Before the expiration of the effective term of public tender bid the organizer of public tender is entitled to offer to the bidders a prolongation of the term. A bidder in a public bid is entitled to decline such an offer, with the effective term of the public tender bid expiring when originally set.

3. Except as provided otherwise by the tender documentation, a bidder in a public tender is entitled to amend or recall his public tender bid prior to the expiration of the public tender bidding term. A notice of the amendment to the bid in a public tender or of the recall thereof shall be forwarded to the organizer of the public tender prior to the expiration of the public tender bidding term.

Article 18. Tender Commission

1. To make the decision as to who is the winner in a public tender a tender commission shall be set up. The decision as to the composition of the tender commission and the chairman thereof shall be made by the organizer of the public tender. Chairman of the tender commission shall chair the session of the tender commission, pronounce the winner in the public tender and sign the minutes of the public tender.

2. In its deliberations the tender commission shall be governed by the present Federal Law,

other federal laws or other regulatory legal acts of the Russian Federation.

Article 19. Opening Up Envelopes Containing Public Tender Bids

1. At the session of the tender commission chairman of the tender commission shall open up the envelopes containing public tender bids at the place and time specified in the tender documentation.

2. The bidders in the public tender who have filed bids for participation in the public tender or representatives thereof are entitled to attend the opening of the envelopes containing the bids for participation in the public tender.

3. At the opening of the envelopes containing public tender bids the names, addresses of the bidders in a public tender, the prices and description of the goods (works, services) they offer shall be announced to the bidders in the public tender in attendance and they shall be entered in the minutes of the public tender. The said information shall be provided to the bidders in the public tender who are absent, on their request.

Article 20. Considering, Appraising and Comparing Public Tender Bids

1. The tender commission shall perform the consideration, appraisal and comparison of bids in a public tender for the purpose of selecting the winner in the public tender in compliance with the provisions of the tender documentation.

2. The tender commission is entitled to demand that the bidders in the public tender provide clarification of the provisions of the bids filed in the public tender.

3. The public tender bid shall comply with all the requirements set forth in the tender documentation.

4. The tender commission shall decline to accept a bid in the public tender if:
the bidder in the public tender does not comply with the requirements set by the organizer of the public tender;
the bidder in the public tender has refused to provide clarification of the provisions of the public tender bid under Item 2 of the present Article;
the public tender bid does not comply with the requirements provided in the tender documentation.

Article 21. Selecting Public Tender Winner

1. Recognized as the winner in a public tender shall be a bidder in the public tender whose public tender bid offered the best terms for the delivery of goods (works, services) for state needs.

2. The tender commission is entitled to demand that the winner in the public tender confirm his compliance with the bidder qualifications set for the public tender by the organizer thereof.

If, after the announcement of the winner in the public tender, the organizer of the public tender comes to the knowledge of the facts of the winner in the public tender being out of compliance with the public tender bidder qualifications set by the organizer of the public tender the bid of the winner shall be dismissed and a new winner in the public tender shall be selected in compliance with Item 1 Article 20 of the present Federal Law and Item 1 of the present Article, out of the rest of the bidders in the public tender.

3. If the winner in the public tender fail to sign the state contract within the term set in the notice of the holding of the public tender the organizer of the public tender shall select a new winner in the public tender in compliance with Item 1 Article 20 of the present Federal Law and

Item 1 of the present Article out of the rest of the bidders in the public tender.

4. The organizer of the public tender shall within three days forward a notice to the winner in the public tender to notify him in writing of his having been selected as the winner in the public tender.

5. Not later than 20 days after the date when the winner in the public tender was selected the organizer of the public tender shall publish in the mass media including the official publication of the authorized federal body of executive power information on the results of the public tender, i.e. the name of the winner in the public tender, the description of the goods (works, services) to be delivered by him as well as the prices of the goods (works, services) to be delivered.

The provisions of the present item shall not apply if the expenses incurred to publish this information make up over 10 per cent of the price of the goods (works, services) provided in the state contract.

Chapter III. Holding a Closed Tender

Article 22. Closed Tender

1. The organizer of tender is entitled to hold closed tenders by agreement with the authorized federal body of executive power, in compliance with the present Federal Law if:

the subject matter of the state contract is the delivery of goods (works, services) for the needs of the defense and security of the state insofar as it concerns state secret under the legislation of the Russian Federation;

sophisticated goods (works, services) are produced by a limited number of suppliers (contractors).

2. When a closed tender is conducted an invitation to take part in it shall be forwarded to each supplier (contractor). No notice of a closed tender shall be published in the mass media.

3. The holding of closed tenders is subject to the provisions of Chapter II of the present Federal Law, except as otherwise provided in the present Article.

Chapter IV. Holding a Two-Phase Tender

Article 23. Two-Phase Tender

1. The organizer of tender is entitled to hold two-phase tenders by agreement with the authorized federal body of executive power, in compliance with the present Federal Law if:

the organizer of tender is in need of holding talks with suppliers (contractors) to determine their capabilities of catering for state needs;

the organizer of tender is going to make a state contract for the performance of research and development as well as technological works.

2. The holding of two-phase tenders are subject to applicable provisions of Chapters II and III of the present Federal Law.

3. When a two-phase tender is conducted all suppliers (contractors) shall file bids for the tender containing the characteristics of the goods (works, services) to be delivered without specifying the prices thereof.

At the first phase of the two-phase tender the organizer of the two-phase tender is entitled to carry on talks with the bidders in the two-phase tender.

According to the results of the first phase the organizer of the two-phase tender is entitled to amend the original provisions of the tender documentation in compliance with the provisions of

the present Federal Law. All amendments made shall be brought to the notice of the bidders in the two-phase tender.

4. At the second phase of the two-phase tender the bidders in the two-phase tender shall again file bids for the two-phase tender including the prices of the goods (works, services) to be delivered.

5. The consideration, appraisal and comparison of the bids filed again for the two-phase tender shall be performed to select the winner in the two-phase tender in compliance with Item 1 Article 20 and Item 1 Article 21 of the present Federal Law.

Chapter V. Resolving Disputes

Article 24. Court Appeal

Decisions made by the organizer of tender when a tender is held can be appealed in court in compliance with the legislation of the Russian Federation.

Article 25. Liability for Violation of the Legislation on Tenders for the Placement of Orders for the Delivery of Goods (Works, Services) for State Needs

The organizer of tender and bidders shall be held accountable under civil, administrative, criminal and other law of the Russian Federation for violation of the provisions of the legislation on tenders for the placement of orders for the delivery of goods (works, services) for state needs.

Chapter VI. Conclusive Provisions

Article 26. Putting Into Force the Present Federal Law

The present Federal Law shall come into force as of the date of the official publication thereof.

Article 27. On Recognizing as Invalid Specific Legislative Acts in Connection with the Adoption of the Present Federal Law

The following shall be deemed invalid in connection with the adoption of the present Federal Law:

Item 6 Article 3 of the Federal Law on the Deliveries of Products for Federal State Needs (Collection of the Legislation of the Russian Federation, item 3540, No. 34, 1994);

Paragraph 2 Item 4 Article 3 of the Federal Law on State Defense Order (Collection of the Legislation of the Russian Federation, item 6, No. 1, 1996).

Article 28. Bringing Regulatory Legal Acts in Compliance with the Present Federal Law

The President of the Russian Federation, the Government of the Russian Federation shall bring their regulatory legal acts in compliance with the present Federal Law.

President
of the Russian Federation

B.Yeltsin

Moscow, the Kremlin