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LOW TENDERS

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EXTRACTS FROM LEGISLATION

Regulation 69 of the Public Contracts Regulations 2015

Abnormally low tenders

69.—(1) Contracting authorities shall require tenderers to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the works, supplies or services.

(2) The explanations given in accordance with paragraph (1) may in particular relate to—

- (a) the economics of the manufacturing process, of the services provided or of the construction method;
- (b) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the supply of the products or services or for the execution of the work;
- (c) the originality of the work, supplies or services proposed by the tenderer;
- (d) compliance with applicable obligations referred to in regulation 56(2);
- (e) compliance with obligations referred to in regulation 71;
- (f) the possibility of the tenderer obtaining State aid.

(3) The contracting authority shall assess the information provided by consulting the tenderer.

(4) The contracting authority may only reject the tender where the evidence supplied does not satisfactorily account for the low level of price or costs proposed, taking into account the elements referred to in paragraph (2).

(5) The contracting authority shall reject the tender where it has established that the tender is abnormally low because it does not comply with applicable obligations referred to in regulation 56(2).

(6) Where the contracting authority establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender may be rejected on that ground alone only—

- (a) after consultation with the tenderer, and
- (b) where the tenderer is unable to prove, within a sufficient time limit fixed by the contracting authority, that the aid in question was compatible with the internal market within the meaning of Article 107 of TFEU.

(7) Where the contracting authority rejects a tender in the circumstances referred to in paragraph (6), it shall inform the Commission.

Regulation 30 of the Public Contracts Regulations 2006

Criteria for the award of a public contract

30.—(1) Subject to regulation 18(27) and to paragraphs (6) and (9) of this regulation, a contracting authority shall award a public contract on the basis of the offer which—

- (a) is the most economically advantageous from the point of view of the contracting authority; or
- (b) offers the lowest price.

(2) A contracting authority shall use criteria linked to the subject matter of the contract to determine that an offer is the most economically advantageous including quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost effectiveness, after sales service, technical assistance, delivery date and delivery period and period of completion.

(3) Where a contracting authority intends to award a public contract on the basis of the offer which is the most economically advantageous it shall state the weighting which it gives to each of the criteria chosen in the contract notice or in the contract documents or, in the case of a competitive dialogue procedure, in the descriptive document.

(4) When stating the weightings referred to in paragraph (3), a contracting authority may give the weightings a range and specify a minimum and maximum weighting where it considers it appropriate in view of the subject matter of the contract.

(5) Where, in the opinion of the contracting authority, it is not possible to provide weightings for the criteria referred to in paragraph (3) on objective grounds, the contracting authority shall indicate the criteria in descending order of importance in the contract notice or contract documents or, in the case of a competitive dialogue procedure, in the descriptive document.

(6) If an offer for a public contract is abnormally low the contracting authority may reject that offer but only if it has—

- (a) requested in writing an explanation of the offer or of those parts which it considers contribute to the offer being abnormally low;
- (b) taken account of the evidence provided in response to a request in writing; and
- (c) subsequently verified the offer or parts of the offer being abnormally low with the economic operator.

(7) Where a contracting authority requests an explanation in accordance with paragraph (6), the information requested may, in particular, include—

- (a) the economics of the method of construction, the manufacturing process or the services provided;
- (b) the technical solutions suggested by the economic operator or the exceptionally favourable conditions available to the economic operator for the execution of the work or works, for the supply of goods or for the provision of the services;
- (c) the originality of the work, works, goods or services proposed by the economic operator;
- (d) compliance with the provisions relating to employment protection and working conditions in force at the place where the contract is to be performed; or
- (e) the possibility of the economic operator obtaining State aid.

(8) Where a contracting authority establishes that a tender is abnormally low because the economic operator has obtained State aid, the offer may be rejected on that ground alone only after—

- (a) consultation with the economic operator; and
- (b) the economic operator is unable to prove, within a reasonable time limit fixed by the contracting authority, that the aid was granted in a way which is compatible with the EC Treaty.

(9) Where a contracting authority rejects an abnormally low offer in accordance with paragraph (8), it shall send a report justifying the rejection to the Office of Government Commerce for onward transmission to the Commission.

(10) In this regulation "offer" includes a bid by one part of a contracting authority to provide services, to carry out work or works or to make goods available to another part of the contracting authority when the former part is invited by the latter part to compete with the offers sought from other persons.