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**An Bille um Thairgeoirí a Rialáil, 2021**  
**Regulation of Tenderers Bill 2021**

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*Mar a tionscnaíodh*

*As initiated*

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**AN BILLE UM THAIRGEOIRÍ A RIALÁIL, 2021**  
**REGULATION OF TENDERERS BILL 2021**

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*Mar a tionscnaíodh*

*As initiated*

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**CONTENTS**

Section

1. Interpretation
2. Identification of abnormally low tenders
3. Submission of abnormally low tenders
4. Past performance as grounds for exclusion

ACTS REFERRED TO



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**AN BILLE UM THAIRGEOIRÍ A RIALÁIL, 2021  
REGULATION OF TENDERERS BILL 2021**

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# Bill

*entitled*

An Act to provide that abnormally low tender bids for construction works with a contract equal to or above the EU threshold for public works are regulated, and disqualified, if their low level is not adequately explained to the relevant authority, and that performance in prior public contracts be grounds for exclusion from participation in a procurement procedure. 5

**Be it enacted by the Oireachtas as follows:** 10

## **Interpretation**

1. In this Act—

“adjusted average” means the average of all tender prices provided excluding the highest tender price;

“contracting authority” has the same meaning as in European Union (Award of Public Authority Contracts) Regulations 2016; 15

“economic operator” has the same meaning as in European Union (Award of Public Authority Contracts) Regulations 2016;

“procurement document” has the same meaning as in European Union (Award of Public Authority Contracts) Regulations 2016; 20

“public works contract” has the same meaning as in European Union (Award of Public Authority Contracts) Regulations 2016;

“tenderer” means an economic operator that has submitted a tender;

“threshold value” has the same meaning as the threshold for public works contracts in European Union (Award of Public Authority Contracts) Regulations 2016; 25

“works contract” has the same meaning as in European Union (Award of Public Authority Contracts) Regulations 2016.

## **Identification of abnormally low tenders**

2. (1) When four or more tender bids are submitted for a public works contract or works contract of contract value equal or more than the threshold value, a tender more than 15 per cent below the adjusted average is to be considered an abnormally low tender. 30

(2) When four or more tender bids are submitted for a public works contract or works contract of contract value equal or more than the threshold value, a tender less than 15 per cent below the adjusted average may be considered an abnormally low tender based on the discretion of the contracting authority or on the basis of professional advice.	5
(3) When fewer than four tender bids are submitted for a public works contract or works contract value equal or more than the threshold value, an abnormally low tender is to be determined based on the discretion of the contracting authority or on the basis of professional advice.	
<b>Submission of abnormally low tenders</b>	10
3. (1) In the event of an abnormally low tender being submitted for a public works contract or works contract of contract value equal or more than the threshold value, the contracting authority must seek information on, and explanation of—	
(a) economics of the construction method/detailed cost breakdown,	
(b) exceptionally favourable conditions available,	15
(c) technical solutions or exceptionally favourable conditions available, and	
(d) compliance with contractual and legislative requirements.	
(2) If, after seeking explanation of an abnormally low tender, the contracting authority has not received a reasonable explanation of how the tenderer can deliver the works required for the tender price submitted, the tender price should be rejected and the tenderer disqualified from the procurement process.	20
(3) If an abnormally low tender is rejected, the contracting authority should record the reasons for rejection and submit it to the Office of Government Procurement.	
(4) If, after seeking an explanation for an abnormally low tender, the contracting authority accepts the explanation given by the tenderer—	25
(a) the contracting authority must notify the Chief Procurement Officer of the Office of Government Procurement if it intends to award a contract to an abnormally low tender,	
(b) the tenderer must confirm the tender price to the Chief Procurement Officer of the Office of Government Procurement,	30
(c) the contracting authority must recognise the potential requirement for enhanced contract management resources to be put in place for the duration of the contract,	
(d) the contracting authority must provide regular reports to the Chief Procurement Officer of the Office of Government Procurement for the duration of the contract.	
<b>Past performance as grounds for exclusion</b>	35
4. (1) Contracting authorities may exclude an economic operator from participation in a procurement procedure for a public works contract or works contract where the economic operator has shown significant or persistent deficiencies or failures in the performance of a prior public contract.	

- (2) In the event of an economic operator being excluded from participation in a procurement procedure for a public works contract or works contract under the terms of *subsection (1)*, the contracting authority should record the reasons for rejection and submit it to the Office of Government Procurement.

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# BILLE

*(mar a tionscnaíodh)*

*dá ngairtear*

Acht do dhéanamh socrú go ndéanfar tairiscintí a imthairgeadh ar leibhéal foríseal i ndáil le hoibreacha foirgníochta lena ngabhann conradh atá ar comhleibhéal le tairseach AE maidir le hoibreacha poiblí, nó os a chionn sin, a rialáil, agus a dhícháiliú mura dtugtar míniú leordhóthanach ar leibhéal foríseal na dtairiscintí sin don údarás iomchuí, agus go mbeidh feidhmíocht i dtaca le conarthaí poiblí roimhe sin ina foras le haghaidh eisiamh ó rannpháirtíocht i nós imeachta sainfhála.

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*Na Teachtaí Mairéad Ní Fhearghail agus Pádraigín  
Uí Riain a thug isteach,  
25 Bealtaine, 2021*

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*(as initiated)*

*entitled*

An Act to provide that abnormally low tender bids for construction works with a contract equal to or above the EU threshold for public works are regulated, and disqualified, if their low level is not adequately explained to the relevant authority, and that performance in prior public contracts be grounds for exclusion from participation in a procurement procedure.

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*Introduced by Deputies Mairéad Farrell and  
Patricia Ryan,  
25th May, 2021*

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