



AN BILLE UMTHAIRGEOIRÍ A RIALÁIL, 2021
REGULATION OF TENDERS BILL 2021

EXPLANATORY MEMORANDUM

The Regulation of Tenders Bill 2021 establishes 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.

Section 1 provides an interpretation of the key terms used therein. “Adjusted average” is taken to mean the average of all tender prices provided excluding the highest tender price. “Contracting Authority”, “Procurement document”, “economic operator”, “threshold value” and “works contract” all have the same meaning as in European Union (Award of Public Authority Contracts) Regulations 2016. “Tenderer” means an economic operator that has submitted a tender.

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

Section 3 addresses the submission of abnormally low tenders. In the event of an abnormally low tender being submitted, the contracting authority must seek information on, and explanation of: (a) economics of the construction method/detailed cost breakdown, (b) exceptionally favourable conditions available, (c) technical solutions, and (d) compliance with contractual and legislative requirements. Following this, if the contracting authority has not received a reasonable explanation for the abnormally low price submitted, the tender price should be rejected, and the tenderer disqualified from the procurement process. The contracting authority should record the reasons for rejection and submit it to the Office of Government Procurement.

If the explanation is accepted, the contracting authority must notify the Chief Procurement Officer of the Office of Government Procurement if it intends to award a contract in respect of the abnormally low tender. The tenderer must confirm the price to the Chief Procurement Officer, and the contracting authority must recognise the potential requirement for enhanced contract management resources to be put in place for the duration of the contract. Finally, the contracting authority must provide regular reports to the Chief Procurement Officer for the duration of the contract.

Section 4 deals with past performance as ground for exclusion. Contracting authorities may exclude economic operators from participation in procurement procedures, where these operators have shown significant

or persistent deficiencies or failures in the performance of prior public contracts. In the event of exclusion, the contracting authority should record the reasons for rejection and submit it to the Office of Government Procurement.

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Bealtaine, 2021.*