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## Rules on Abnormally low tenders

Public Procurement Regulatory Commission in accordance with Article 87, paragraph 2, sub-paragraph 2.8 and Article 61, paragraph 6, of Public Procurement Law No 04/L-042, amended and supplemented with the law No. 04/L-237, law No. 05/L-068 and law No. 05/L-092, adopts these rules which complement and provide clarifications for abnormally low tenders.

**Article 1**

**Scope**

1.1 The scope of these rules is to provide clarifications to the Contracting Authorities in regard to the abnormally low tender concept which refers to those tenders that, at first glance, appear to the contracting authority unreliable if compared to the scope of the contract and, accordingly, likely of a bad performance of the contract.

1.2 In any case, where an abnormally low tender threshold is provided, **it is precluded the automatic exclusion of abnormally low tenders** without the recourse to an *inter partes* procedure with the concerned economic operator for examining the tender regarded by the contracting authority as abnormally low.

**Article 2**

**Terms used**

Terms used in these Rules have the same meaning as mentioned in Article 4 (Definitions) of the Public Procurement Law No. 04 / L-042, as amended and supplemented with Law no. 04 / L-237, Law no. 05 / L-068 and Law no. 05 / L-092.

**Article 3**

**General information**

3.1 Contracting authorities shall require from the economic operators to explain the price offered, where **all of the following conditions are fulfilled:**

1. the price offered is more than **30 % lower than the average price of the responsive tenders;**
2. the price offered is more than **10 % lower than the price or costs of the second lowest tender**;
3. at least **3 (three) tenders** have been submitted.

3.2 Where tenders appear to be abnormally low for other reasons than those individuated in the paragraph 3.1 of these rules, contracting authorities may assess the reliability of such tenders and consequently request explanations accordingly to the following paragraphs and article 61 of the PPL.

**Article 4**

**Review procedure *(inter partes)***

4.1 When a tender is considered abnormally low in accordance with article 61 of the PPL and paragraphs 3.1 or 3.2 of the present rules, such a tender **may not be rejected** without investigation and consideration of the relevant elements that gave rise to a particularly low tender.

4.2 In case a tender (or any part thereof) appears to be abnormally low, the Contracting Authority **shall request, in writing**, from the Economic Operator which has submitted a tender which appears to be abnormally low, a written declaration which includes a detailed breakdown of the relevant parts of the tender and which includes an explanation for the low price, using the ***standard form approved by the PPRC “Standard letter for abnormally low tender”.***

4.3 The Economic Operator shall reply in writing to the Contrcating Authprty. *If not*, the tender shall be rejected.

4.4 In determining whether a tender is abnormally low, the contracting authority must take into consideration:

* + 1. the economics of the manufacturing process, of the services provided and/or of the construction method;
    2. any technical solutions offered or chosen;
    3. any exceptionally favourable conditions avail­able to the tenderer for supplying the products, providing the services, executing the works project and/or performing the construction activities being procured; and/or
    4. the originality of the supplies, services, work or works proposed.

4.5 In addition to the elements of the tender individuated in article 4.4 of the present rules, the Contracting Authority must take into consideration:

* + 1. Elements of subtotals as wages as well as salaries, materials, overheads and profits.

4.6 After the Contracting Authority receives the written explanation from the Economic Operator, the Contracting Authority shall either:

* + 1. *if the explanation is satisfactory*, **treat the tender same as other tenders**; or
    2. *if the explanation is not satisfactory,* **reject the tender,** and in compliance with article 61 of the PPL **notify the PPRC**, using the standard form approved by PPRC, “***Notification of the rejection of an abnormally low tender”***, within two days from the date of the decision. .

4.7 The tenderer concerned must be informed about the final result of the evaluation.

**EXAMPLE 1**

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| --- | --- | --- | --- | --- |
| **No.** | **Lot 1** | | | |
|  | **A** | **B** | **C** | **D** |
| 1 | **condition 1** – first condition is fulfilled because 6 offers are received | **6 offers received** |  |  |
| 2 |  | 1 | 2,021,514.20 |  |
| 3 |  | **2** | **1,334,220.45** |  |
| 4 |  | 3 | 2,151,997.25 |  |
| 5 |  | 4 | 1,899,832.59 |  |
| 6 |  | 5 | 2,494,303.84 |  |
| 7 |  | 6 | 1,987,499.90 |  |
| 8 |  | **Total**  **(C2+C3+C4+C5+C6+C7)** | **11,889,368.23** |  |
| 9 |  | **Average (C8/6)** | **1,981,561.37** |  |
| 10 | **condition 2** – all offers below this price fulfil the second condition | **threshold 30% (average/1.3)** | **1,524,277.98** | In this case only offer number 2 fulfils the second condition therefore we continue with the third condition |
| 11 | **condition 3** – 10% threshold between the lowest price compared to the second lowest price | **threshold 10% (second offer/1.1)** | **1,727,120.54** | In this case offer number 2 fulfils as well the third condition |

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| **Condition** | **Requirement** | | **Justification** |
| 1 | at least **3 (three) tenders** have been submitted | | The first condition is fulfilled because 6 bids are received |
| 2 | the price offered is more than **30 % lower than the average price of the responsive tenders** | | The second bid fulfils the second condition (30%) because the offered price is more than 30% lower than the average of the tenders. See threshold in column C10 |
| 3 | the price offered is more than **10 % lower than the price or costs of the second lowest tender** | | The second bid fulfils the third condition (10%) because compared with the second consecutive bid is more than 10% lower. See threshold C11 |
| **Conclusion** | | **Offer no. 2 meets the 3 determined conditions and accordingly can be considered as abnormally low offer** | |

**EXAMPLE 2**

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| --- | --- | --- | --- | --- |
| **N0.** | **Lot 2** | | | |
|  | **A** | **B** | **C** | **D** |
| 1 | **condition 1** – first condition is fulfilled because 4 offers are received | **4 offers received** |  |  |
| 2 |  | 1 | 2,684,598.09 |  |
| 3 |  | 2 | 1,888,880.48 |  |
| 4 |  | 3 | 1,878,488.51 |  |
| 5 |  | 4 | 2,497,038.42 |  |
| 6 |  |  |  |  |
| 7 |  |  |  |  |
| 8 |  | **Total (C2+C3+C4+C5)** | **8,949,005.50** |  |
| 9 |  | **Average (C8/4)** | **2,237,251.38** |  |
| 10 | **condition 2** – all offers below this price fulfil the second condition | **threshold 30% (average /1.3)** | **1,720,962.60** | in this case none of the bids meet the second condition therefore we can **NOT proceed with the third condition** |

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| **Condition** | **Requirement** | | **Justification** |
| 1 | at least **3 (three) tenders** have been submitted | | The first condition is fulfilled because 4 bids are received |
| 2 | the price offered is more than **30 % lower than the average price of the responsive tenders** | | None of the bids fulfils the second condition (30%) because the offered price is less than 30% lower than the average of the tenders. See threshold in column C10 |
| **Conclusion** | | **None of the offers may be considered as abnormally low tenders in accordance with paragraph 3.1 but the CA may proceed in accordance with paragraph 3.2** | |