
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 446

The Public Contracts (Scotland) Regulations 2015

PART 2

RULES IMPLEMENTING THE PUBLIC CONTRACTS DIRECTIVE

CHAPTER 2

RULES ON PUBLIC CONTRACTS

Choice of Participants and Awarding Contracts

Abnormally low tenders

69.—(1) A contracting authority must require a tenderer to explain the price or costs proposed in the tender where the tender appears 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 execution of the works or for the supply of the products or services;
- (c) the originality of the works, supplies or services proposed by the tenderer;
- (d) compliance with obligations referred to in regulation 57(2) (general principles);
- (e) compliance with obligations referred to in regulation 71 (subcontracting);
- (f) the possibility of the tenderer obtaining State aid.

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

(4) The contracting authority may only reject the tender where the explanations given and any evidence supplied do 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 must reject the tender where the authority has established that the tender is abnormally low because it does not comply with applicable obligations referred to in regulation 57(2) (general principles).

(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 the TFEU.

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