

## **Annex 1:**

### **ABNORMALLY LOW TENDERS: REGULATIONS**

The following is a replica of the amended versions of the applicable regulations concerning Abnormally Low Tenders<sup>i</sup>.

#### **PUBLIC PROCUREMENT REGULATION 243 OF S.L. 601.03**

243. (1) Contracting authorities shall require economic operators 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 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 obligations established in regulations 13(m) and 16(k);
- (e) compliance with obligations referred to in regulation 60;
- (f) the possibility of the tenderer obtaining State aid.

(3) Failure by the economic operator to send his explanations within the written time-frame imposed by the contracting authority, shall be deemed as acceptance from the economic operator that his tender is abnormally low.

(4) The contracting authority shall assess the information provided by consulting the tenderer. It 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 sub-regulation (2).

(5) Contracting authorities shall reject the tender, where they have established that the tender is abnormally low because it does not comply with applicable obligations referred to in regulation 13(m) and 16(k).

(6) Where a 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 after consultation with the tenderer where the latter 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. Where the contracting authority rejects a tender in those circumstances, it shall inform the Commission thereof.

## **UTILITIES PROCUREMENT REGULATION 174 OF S.L. 601.05**

174. (1) Contracting entities shall require economic operators 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 referred to in sub-regulation (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 obligations established in regulation 34(m);
- (e) compliance with obligations referred to in regulation 83;
- (f) the possibility of the tenderer obtaining State aid.

(3) The contracting entity shall assess the information provided by consulting the tenderer. It 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 sub-regulation (2).

(4) Contracting entities shall reject the tender, where they have established that the tender is abnormally low because it does not comply with applicable obligations referred to in regulation 34 (m).

(5) Where a contracting entity establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender may be rejected on that ground alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the contracting entity, that the aid in question was compatible with the internal market within the meaning of Article 107 of the TFEU. Where the contracting entity rejects a tender in those circumstances, it shall inform the Commission thereof.

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<sup>i</sup> Contracting Authorities shall always review the latest version of the applicable Procurement Regulations which may be accessed through MJEG's website: S.L. 601.03 (<https://legislation.mt/eli/sl/601.3/eng/pdf>) and S.L. 601.05 (<https://legislation.mt/eli/sl/601.5/eng/pdf>).