Construction Procurement Handbook

Chapter 8

Abnormally Low Tenders and Sustainable Tender Pricing

Introduction

1.1 Regardless of economic cycle, competitive market conditions and tight margins within the construction industry create a difficult trading environment for bidders,. As a result, some firms are prepared to submit uneconomic or unsustainable tender prices. Such practices significantly increase the risk of poor contract performance, create difficulties within supply chains, have a damaging effect on the industry and contribute to the creation of an adversarial claims culture.

1.2 The public sector is also subject to significant financial pressure with reduced budgets leading to greater pressure to ensure that finances stretch further and a natural, but misplaced, presumption that tender price is the most important factor in determining suitability of tenders for public contracts. This may be a false economy as there could be an attempt by the bidder to regain their income through claims, contract delivery and the final account. It may also be the case that the impact of an abnormally low bid is not suffered by the main contractor but is felt further down the supply chain by suppliers and sub-contractors less able to absorb any financial reduction. Sub-optimal prices may also lead to reduced quality which, in the long term, will cost the client more to fix and may disrupt the service intended to be delivered from the asset.

1.3 There is no legal definition of what can be regarded as an abnormally low tender. However, it is generally recognised that the term ‘Abnormally Low tender’ refers to a situation where the price offered by the bidder raises doubts as to whether the offer is economically sustainable and will properly deliver the contract requirements.

1.4 Abnormally low tenders benefit neither the public sector, the Scottish construction industry or the public users of those assets and all parties should strive to prevent them from occurring. A culture of acceptance of low bids inevitably encourages under-pricing of tenders and is counterproductive in terms of the contribution of public procurement to the sustainability of the Scottish economy and, in this case, the construction industry. They stifle innovation and are damaging to productivity and growth in the industry, all of which in the longer term have an impact on the economy and the ability of contracting authorities to get the best contractors to bid for work. The situation is, in short, perpetuated by an industry that is willing to submit unsustainable bids and a client body which is willing to accept them. Both sides must recognise the damage they do to everyone’s interests.

1.5 While it is recognised that bidders may, on occasion, choose for commercial reasons, to submit a sub-economic tender, contracting authorities (CAs) must set policies and engage with the market to discourage bidders from submitting prices that are so low that they put the delivery of the contract at risk.

1.6 It is important to differentiate between a *low* tender and an *unsustainably low* tender. It is perfectly acceptable for a contractor to seek to gain a commercial advantage over its competitors by offering a lower price and for a client to seek to gain maximum stretch for their budget. But, that price must be fully deliverable both for the contract and the future viability of the contractor and the industry. Similarly, clients must not encourage contractors to submit unsustainable bids. Bids are therefore, in simplistic terms either sustainable or unsustainable and both contractors and clients have a responsibility to ensure that all tenders are sustainable.

Sustainable Tender Pricing

2.1 CPN 1/2021 Sustainable Tender Pricing, notes that unsustainable pricing benefits no one and that it is the responsibility of contractors and clients to end this corrosive practice and incorporate the culture that such practices are unacceptable.

2.2 Chapter 3 of the Construction Phase Handbook provides a definition of quality and notes:

> "The purpose of any construction project is to deliver an output which contributes to one or more outcomes. In order to do this, the output, a physical built asset – whether a road, a hospital, a school or other public structure - must meet the requirements of the client in all respects."

2.3 The delivery of that quality, however the client specifies it, must be paid for and it is a false economy to expect the contractor to deliver that quality at unsustainable prices. To do so may result in a number of outcomes, including but not restricted to:

- contractor claims;
- unacceptable pressure on supply chains to cut their prices;
- extensive snagging and latent defects;
- poor payment practice by the contractor to its supply chain
- difficult contract management
- use of inferior materials, poor work practices and failure to adhere to the specification
- short terms solutions
- contractor insolvency (either direct or supply chain)
- reduced economic multiplier gain
- inability of the asset to deliver the services it is designed for

2.4 It is therefore essential that clients properly estimate the cost of the job and set the specification according to what is affordable within current and future budgets for the delivery of the built asset and its whole life management and do not put unfair demands on the contractor by squeezing more out of the contract than is reasonably deliverable.

2.5 Similarly, contractors must ensure that their submissions accurately reflect what they are contractually bound to deliver in accordance with the client's specification and for the price at contract award.

Purpose and outline

3.1 This guidance is designed to give CAs the ability to objectively review whether tenders are potentially abnormally low and to take action to exclude or accept them. Following the guidance will also allow CAs to demonstrate before, during and after award that, in doing so, the process was open, fair and impartial. The process should be applied *after* arithmetical checking and bid clarification. It is a two stage process.

- **Stage One** is the identification of potential ALTs through the application of an objective formula. Where potential ALTs are identified, Stage One must not be used on its own; it is an indication of a potential ALT *not* confirmation of an actual ALT. Therefore, where a potential ALT has been identified, it must be followed up by dialogue with the bidder to seek an explanation for the bid.

- **Stage Two** is a dialogue with relevant bidders to seek their explanation of the price and costs of potential ALTs. The crux of this stage is that the bidder must assure the evaluation panel that there is a correlation between the price and the proposal and that the bidder can deliver the proposal for the price offered. For below 2015 Regs threshold procurements, it need only be carried out in the case of a bid which has been identified as being potentially abnormally low *and* which is selected as the Most Economically Advantageous Tender (MEAT)[1] bid. Bidders may have valid reasons which explain why a bid is not abnormally low and is therefore sustainable, presenting no additional risk to the successful completion of the contract. For example, a bidder who has a yard full of lamp posts unused from a previous contract may decide to discount the cost of material in their bid in order to reduce a book loss and therefore may choose to submit a bid which is lower than others but not abnormally low. This is quite distinct to the situation where a bidder submits a bid that is non-sustainable for the delivery of the contract. This can often be enabled by bidders making entirely arbitrary and speculative reductions to their bids with the intention of driving discounts from their suppliers and sub-contractors in order to secure an award. Bidders should not be given the opportunity to re-value or amend their bids as part of this evaluation process. All bids, which are part of an above 2015 Regs regulated procurement and which are identified as potentially abnormally low must be investigated.

3.2 The use of this process can help inform but does not replace the need for sound and appropriate consideration of tenders by construction professionals. Indeed, the use of appropriate professional expertise is essential throughout the whole procurement process. It is based on the Northern Ireland Finance Department, Construction Works Procurement, Guidance on Abnormally Low Tenders published in 2013 and updated in 2016.

Legislation

4.1 The Public Contract (Scotland) Regulations 2015 set out a number of rules which are relevant to abnormally low tenders.

- Regulation 69 of the Public Contract (Scotland) Regulations 2015. This sets out that *"A contracting authority must require a tenderer to explain the price and costs proposed in the tender where the tender appears to be abnormally low in relation to works, supplies or services."*

[1] MEAT - See paragraph 5.7.1 of the Guidance under the Procurement Reform (Scotland) Act 2014

- Regulation 67(1) directs that *"A contracting authority (a) must base the award of public contracts on the most economically advantageous tender assessed from the point of view of the contracting authority; and (b) may not use price only or cost only as the sole award criteria."*.

- Regulation 67(2) directs that *"A contracting authority must identify the most economically advantageous tender on the basis of the best quality/price ratio, which must be assessed on the basis of criteria linked to the subject matter of the public contract in question and must include price or cost, using a cost effectiveness approach."*.

- Regulation 67(3) sets out that *"A cost effectiveness approach referred to in paragraph 67(2) may include life-cycle costing in accordance with regulation 68..."*

Application

5.1 The regulations apply specifically to above 2015 Regs thresholds. The Scottish Government's intention is that this guidance should be applied as good practice for all relevant procurements, including those below those thresholds.

5.2 The formula contained within this guidance is provided for use by contracting authorities on applicable construction contracts to assist them in identifying potential ALTs. It acts as an indicator of ALT, rather than a determinant and must not be used as the sole evidence in determining whether a bid is abnormally low. Note, though, that the formula included in this guidance may not be as applicable for procurements below £30,000 or where there are fewer than four tenders. The CA should decide prior to inviting tenders whether it is going to apply the procedure in the event that fewer than four tenders are received and notify tenderers accordingly in the contract notice and ITT. Where the formula is not deemed to be appropriate, the contracting authority should still assess the tenders using appropriate professional advice to determine whether any are abnormally low and record their deliberations in reaching their conclusion. If any tender is identified as being potentially low then stage two of this process must be applied.

5.3 The application of this ALT process does not remove the need to undertake the normal tender assessment process, including preparation of a detailed tender report and scrutiny of individual rates, and so on, before awarding a contract.

Bid Clarification

6.1 Scrutiny of a potential ALT is not part of bid clarification, neither does it offer the bidder a second chance to make a bid or correct it. Therefore, it is essential that any clarification of bids is conducted prior to the ALT process set out in this guidance. CAs should ensure that the same tender prices are used for the identification of potential ALTs and for the assessment of the tender.

Bid Rigging

7.1 The purpose of this process is to identify potential ALTs, but it can also contribute to identifying and combating bid rigging. For example, it can assist in defeating cover pricing schemes by ensuring that objective consideration of bids is conducted in order to identify the true level of pricing for a contract and through stage two scrutiny of low bids. It is, though, not in itself designed to identify bid rigging and CAs should remain alert and guard against the efforts of unscrupulous elements to rig tender processes. The following are some characteristics of suspicious bidding patterns:

- Bids received at the same time or containing unusual wording;
- Different bids with identical prices;
- Bids containing less detail than expected;
- The likely bidder failing to submit a bid;
- The lowest bidder not taking the contract;
- Bids that drop on the entry of a new or infrequent bidder;
- The successful bidder later sub-contracting work to a supplier that submitted a higher bid;
- Expected discounts suddenly vanishing or other last minute changes;
- Suspiciously high bids without logical cost differences;
- A bidder that betrays discussions with others or has knowledge of previous bids.

7.2 Further information is available from the Competition and Markets Authority.

Stage One - Identifying Potential ALTs

8.1 **Overview** The aim of Stage One of this process is to identify any *potential* ALTs. The identification of a potential ALT can be difficult and whilst it is essential that professional construction expertise be applied at this stage; the use of a formula can assist by assuring an objective assessment of tender prices. The formula does not look at the financial standing of the bidder it is based solely on the tender price. Financial standing of the bidder is examined elsewhere in the tender process. However, accounts showing a strained relationship between the assets and liabilities of a bidder which has submitted a potentially abnormally low tender may be indicative of the bidder attempting to buy in work to keep the company afloat. Stage One is a process designed solely to flag up what *might* be an abnormally low tender. It identifies a lowest boundary below which bids may potentially be considered as being abnormally low tenders. This is shown schematically in *Figure 1*. Throughout both Stage One and Stage Two CAs should seek the advice of construction professionals with knowledge of the sector when considering the evidence presented.

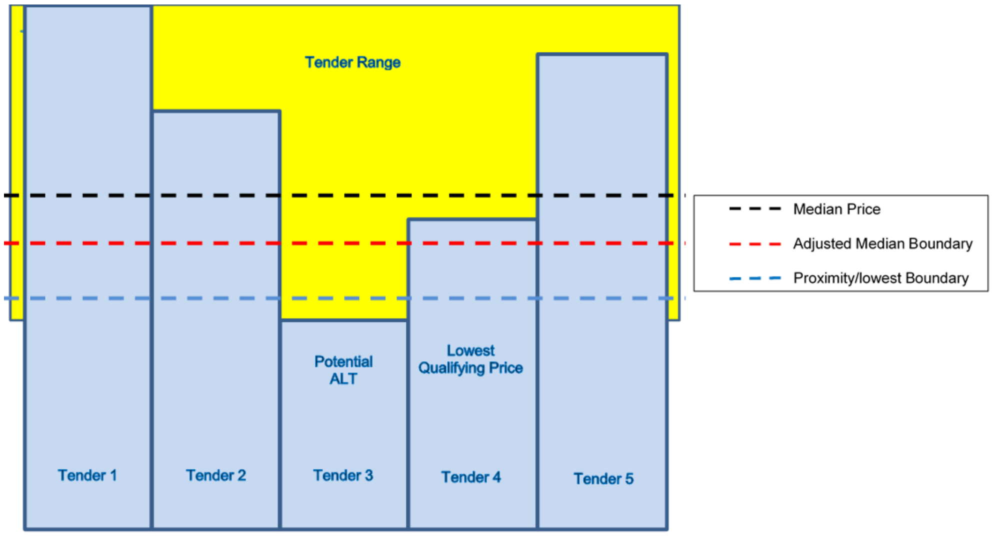

Figure 1: Stage 1 review of Potential ALTs.

8.2 **Transparency** Contracting authorities should ensure that all potential bidders are aware, through the contract notice and procurement documents, of their intention to use this process and that it may result in bidders being subject to further scrutiny. Where a bidder is unable to explain, to the satisfaction of the authority, the reason for a low level of price or costs proposed it should be made clear that they may be excluded from the tender process.

8.3 **The Formula** An online calculator which automatically applies the formula is available ***as a supporting document to this guidance***. The formula calculates a low boundary based on a median price against which all bids are measured. Any bid which falls below the lowest boundary is considered to be a potential abnormally low tender.

8.4 There are a number of elements to the formula:

- **Median Price (MP)** is the median of all the tender prices provided. That is, it is the price which represents the middle price of all the bids. For example, if there are five bids, £1,000, £1,200, £1,300, £1,400 and £1,500, the median price is £1,300.

- **Median Boundary (MB)** is a figure of 85% of the Median Price. This allows a bracket within which a bid may reasonably by considered to be in keeping with the other bids for the contract. The 85% boundary has been set following research conducted across other policy including the Northern Ireland policy referred to earlier and it is recommended that this is the figure used by CAs.

- **Lowest Qualifying Price (LQP)** is the lowest price submitted that is more than or equal to the Median Boundary.

- **Proximity Margin (PM)** This provides a margin below the lowest qualifying price calculated on the basis of 1% of the lowest qualifying price, with a minimum value of £1,000 and a maximum value of between £100,000 and £1m dependent on the value of the MP. Figure 2 shows the value bands and maximum proximity margins. The band is selected according to where on the range the MP of the tenders sits.

Value Band	Median Price Range £	Max Proximity Margin £
A	0 - 10m	100,000
B	10m – 50m	300,000
C	50m – 100m	500,000
D	>100m	1,000,000

Figure 2: Value bands and maximum proximity margins

- **Proximity Boundary (PB)** is the lowest qualifying price minus the proximity margin.

- **Lowest Boundary (LB)** is the lower figure of the proximity boundary and the median boundary.

8.5 The lowest boundary is relative to the submitted bids which in turn represent the market at that point in time. By definition therefore, the majority of bids will fall within the acceptable bracket. However, CAs should also consider the relationship between the lowest boundary, the QS's cost plan/estimate and the submitted bids. If there is a significant deviation, then a review should be conducted.

8.6 A full analysis of the tender identified as potentially abnormally low to identify specific areas of concern should be conducted. This will form the basis of the letter seeking an explanation from the bidder.

Stage Two – Scrutiny of Potential ALT

9.1 It is a requirement of Regulation 69 of the Public Contracts (Scotland) Regulations 2015 (PCSR15) that *"A contracting authority must require a tenderer to explain the price or cost proposed in the tender where the tender appears to be abnormally low…".* The regulations only apply to procurements above the 2015 Regs thresholds. However, as noted in paragraph 2.1 above, this guidance has been written to be applied as good practice for all procurements including those below those thresholds. For above 2015 Regs threshold procurements all bids identified as potentially abnormally low must be scrutinised to comply with Regulation 69. It makes sense though, for below threshold procurements that stage 2 scrutiny is only carried out where a bid is identified as potentially abnormally low *and* is the Most Economically Advantageous Tender.

9.2 Stage 2 is a consultation and verification process and must be carried out prior to the rejection of any bids. It is designed to protect bidders from arbitrary assessments by CAs by giving them a chance to demonstrate the bid is genuine and capable of delivering the requirement. This is not an error rectification process and bidders are not to be given the opportunity to amend any element of their submission at this stage except to clarify what is already included. For example, if a bidder has misinterpreted the design information this would represent a material deficiency in the proposal and the bid should be scored accordingly or rejected as non-compliant. Under the terms of the Trade and Cooperation Agreement (TCA) with the EU, the contracting authority may ask the supplier if the price takes any subsidies into account. This is not stated in the 2015 Regs and these are to be treated as if they had been amended to reflect this right.

9.3 Regulation 69(2) of the 2015 Regs sets out *"…explanations given in accordance with paragraph (1) may, in particular, relate to-*

- *the economics of the manufacturing process, of the services provided or of the construction method and costs;*
- *technical solutions or exceptionally favourable conditions available;*
- *originality of the proposed solution or methods*;
- *compliance with environmental, social and labour law (Regulation 57(2));*
- *subcontracting arrangements (Regulation 71); and*
- *state aid provided*
- *Whether the price or costs takes into account the grant of subsidies*

9.4 Contracting authorities should be alert to the impact of a potentially low tender on the supply chain of a bidder. It is feasible that a bidder may demonstrate that the bid is either not abnormally low or that there is a valid reason for it being low at main contractor level. This may though hide the fact that the impact of the low element has been passed on to the supply chain. This therefore requires CAs to ensure they are fully conversant with the proposal for delivery of the contract and where potentially low elements may manifest themselves.

9.5 **Risk Assessment** In essence the CA must look for a justification of the reasons why the bidder can deliver the contract for the price. However, in considering responses to the letter, the CA should have regard to the full facts and carry out a risk assessment of the deliverability of the contract on the terms proposed by the bidder. For example, lack of a profit in a price may not be indicative of an unsustainable abnormally low tender where the bidder is a not for profit company. Similarly, a company may be looking to gain experience in a particular sector and therefore may be prepared to accept a low profit or even a loss in order to gain that experience. A full risk assessment considering all the facts of the bid against the project will assist the CA in determining whether a bid is truly an abnormally low tender and unsustainable and will provide the evidence to support the decision should a challenge be made. CAs should be cautious of sweeping statements made by contractors "…we undertake to perform the contract for the tender price.." without there being solid evidence to support that they will.

9.6 **Rejection of Bid** The following regulations apply for over 2015 Regs thresholds procurements:

- **Regulation 69(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 Regulation 69(2)."*

- **Regulation 69(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)."*

- **Regulation 69(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."

- **Regulation 69(7)** *"Where the contracting authority rejects a tender in the circumstances referred to in regulation 69(6) it must inform the commission."*

9.7 **Award of Contract** There will be occasions where a bid that has been identified as a potential abnormally low tender is awarded the contract. Whilst the steps taken in following this procedure should have adequately reassured the project team of the viability of the bid, there may be occasions where the bidder has explained special circumstances which may require bespoke arrangements for management and supervision of the contract. These may include those which may have been highlighted in the risk assessment of the bid discussed at paragraph 7.5. A signed undertaking (see Annex C) from the Chief Executive/Managing Director/Senior Partner of the bidding company should be sought to the effect that the price offered is a true and genuine price and that the signatory guarantees the delivery of the contract under the terms proposed. It is also good practice to ensure that the Investment Decision Maker and other project officers are fully informed of and involved in the circumstances for the award of the contract.

Further Advice

10.1 Worked examples are provided at Annex D to illustrate the application of the processes within this guidance.

10.2 A decision flow chart is provided at Annex E to assist in the application of the process detailed within this guidance.

10.3 To assist in the identification of ALTs, a spread sheet calculator is provided *as a supporting document to this guidance*. Whilst every effort has been made to ensure that this calculator is accurate and up to date, we cannot accept any liability for the use of this tool. We recommend that all calculations are independently verified.

10.4 The decision process set out in the flow chart in Annex E should only be run once for each procurement and not rerun after any exclusion of an abnormally low tender. The process should be completed in full, that is all suspect bids reviewed before any tender is excluded.

Annex A

Text For Inclusion In Contract Notice And Tender Documentation

Abnormally Low Tenders

Any tender price that:

- is more than 15% lower than the median price (MP); and
- exceeds the proximity margin, that is, is more than 1% lower than the lowest qualifying price.

will be deemed to be potentially abnormally low, and will be excluded from this competition unless the tenderer satisfactorily explains the aspects that appear abnormally low.

The median price is the median of all the tender prices provided.

The proximity margin shall be calculated on the basis of 1% of the lowest qualifying price, with a minimum value of £1,000 and a maximum value of between £100,000 and £1m dependent on the value of the AAP.

The table below shows the value bands and maximum proximity margins. The band is selected according to where the MP sits on the range.

Band	Tender Range £	Max Proximity Margin £
A	0 - 10m	100,000
B	10m – 50m	300,000
C	50m – 100m	500,000
D	>100m	1,000,000

The lowest qualifying price is the lowest price submitted that is more than or equal to 85% of the median price.

Where fewer than four tenders are received, the contracting authority will not apply the formula but bids will be reviewed by a construction professional to identify whether it is potentially abnormally low. [*Delete as appropriate*]

Tenderers deemed to have submitted a potentially low bid, which is subsequently included in the competition, will be required to submit a declaration to the effect that:

- The tender and price submitted includes for all the works/services and associated deliverables pertaining to the tender as detailed in the tender package: and
- They have considered the contract provisions in respect of liquidated and unliquidated damages in their decision to stand by their tender price; and

- They understand that the tender price will be treated as a 'high risk' item and recorded accordingly within the risk register; and

- They understand that their arrangements for the appointment and payment of sub-contractors may be subject to scrutiny by the employer

Annex B

Letter Template

Dear [Name],

The test outlined in the contract notice has identified that the price that you submitted in your tender dated [date] amounting to [£] may be an abnormally low tender. I am therefore required to ask you to provide the following details to demonstrate your ability to complete the works for your tender price of:

[Insert request for information on any particular aspects of the tender that appear low or if the entire tender appears low ask for details of]:

- economics of the construction method/detailed cost breakdown;
- technical solutions or exceptionally favourable conditions available;
- proposals for compliance with contractual and legislative requirements.
- compliance with environmental, social and labour law (Regulation 57(2);
- subcontracting arrangements (Regulation 71); and
- state aid provided.

The median price for this competition is calculated at £[value].

As advised in the Invitation to Tender, any tender price that:

- is more than 15% lower than the median price; and
- exceeds the proximity margin, that is, is more than 1% lower than the lowest qualifying price; or

will be deemed to be potentially abnormally low and may be excluded from this competition if adequate information to justify the price tendered is not provided.

If you would find it helpful to meet to discuss this, please contact me to arrange a suitable time. In the meantime, I would be grateful to receive your response to this request for explanation by no later than [date]

Yours etc.

Annex C

Tenderer's Declaration

Tenderer’s Declaration

I (as CEO/Managing Director/Owner of the firm) have reviewed the tender for [contract] submitted by my firm [firm] dated [date].

I hereby declare that the tender I have submitted, [tender sum], includes for all the works/services and associated services pertaining to this tender as detailed in the tender package.

I have also considered the contract provisions in respect of liquidated and un-liquidated damages in my decision to stand by my tender price.

I understand that my/our tender price will be treated as a contract ‘high risk’ item and recorded and managed accordingly within the Risk Register.

I understand my/our arrangements for the appointment and payment of sub-contractors will be subject to scrutiny by the Employer.

Signed
[CEO/Managing Director/Owner]

Annex D

Worked Examples

Some worked examples of the calculation for Abnormally Low Tenders.

Example 1

In this example, as shown in Figure 1 below, seven bids have been submitted. No bids have been adjudged to be below the lowest boundary and, consequently, none will be scrutinised under stage 2.

Figure 1

		Tender Value	Is tender below the Median Boundary?	Is tender below Proximity Boundary?	Is tender below Lowest Boundary?	Further Scrutiny Required?
Tenders	A	£75,000,000	Yes	No	No	No
	B	£80,000,000	Yes	No	No	No
	C	£82,000,000	Yes	No	No	No
	D	£83,000,000	No	No	No	No
	E	£84,000,000	No	No	No	No
	F	£90,000,000	No	No	No	No
	G	£93,000,000	No	No	No	No
	H					
	I					
	J					

Median Price. The price lying at the midpoint of the tender price range.		£83,000,000.00
Median Boundary. 85% of the Median Price		**£70,550,000.00**
Lowest Qualifying Price. The lowest tender above the Median Boundary		£75,000,000.00
Proximity Margin.		£500,000.00
Proximity Boundary. The lowest Qualifying Price minus the proximity margin.		£74,500,000.00
Lowest Boundary. The lower of the Median Boundary and the Proximity Boundary.		**£70,550,000.00**

Figure 1

Example 2

In this example, shown at Figure 2, ten bids have been received and two have been shown to be potentially abnormally low and will require to be scrutinised under stage two.

		Tender Value	Is tender below the Median Boundary?	Is tender below Proximity Boundary?	Is tender below Lowest Boundary?	Further Scrutiny Required?
Tenders	A	£12,000,000	No	No	No	No
	B	£8,000,000	Yes	Yes	Yes	Yes
	C	£10,000,000	Yes	No	No	No
	D	£8,500,000	Yes	Yes	Yes	Yes
	E	£13,000,000	No	No	No	No
	F	£12,000,500	No	No	No	No
	G	£9,500,000	Yes	No	No	No
	H	£10,500,000	No	No	No	No
	I	£10,000,500	No	No	No	No
	J	£9,750,000	Yes	No	No	No

Median Price. The price lying at the midpoint of the tender price range.	£10,000,250.00
Median Boundary. 85% of the Median Price	**£8,500,212.50**
Lowest Qualifying Price. The lowest tender above the Median Boundary	£9,500,000.00
Proximity Margin.	£95,000.00
Proximity Boundary. The lowest Qualifying Price minus the proximity margin.	£9,405,000.00
Lowest Boundary. The lower of the Median Boundary and the Proximity Boundary.	**£8,500,212.50**

Figure 2

Example 3

In Figure 3 below, there are five tenders all under £300,000. The calculator indicates the two lowest bids as being potentially abnormally low; however it will be noted that Bid A is only £40k lower than the median price the same amount by which Bid E is higher than the median price. This presents a dilemma and whilst it might be reasonable to scrutinise the bids further it would be difficult to justify excluding either Bid A or Bid B unless the scrutiny flags up compelling evidence.

		Tender Value	Is tender below	Is tender below	Is tender below	Further Scrutiny
Tenders	A	£150,000	Yes	Yes	Yes	Yes
	B	£160,000	Yes	Yes	Yes	Yes
	C	£190,000	No	No	No	No
	D	£200,000	No	No	No	No
	E	£240,000	No	No	No	No
	F					
	G					
	H					
	I					
	J					

Median Price. The price lying at the midpoint of the tender price range.	£190,000.00
Median Boundary. 85% of the Median Price	**£161,500.00**
Lowest Qualifying Price. The lowest tender above the Median Boundary	£190,000.00
Proximity Margin.	£1,900.00
Proximity Boundary. The lowest Qualifying Price minus the proximity margin.	£188,100.00
Lowest Boundary. The lower of the Median Boundary and the Proximity Boundary.	**£161,500.00**

Figure 3

Example 4

Figure 4 is a low value procurement and only three bids have been received. Note that the calculator has flagged up that ideally a minimum of four tenders is required in order to use the calculator. The calculator has indicated that Bid A is potentially abnormally low and whilst there is a significant gap between the median and that bid it would be worthwhile reviewing the bid against the cost estimate before deciding to take action under stage two.

		Tender Value	Is tender below the Median Boundary?	Is tender below Proximity Boundary?	Is tender below Lowest Boundary?	Further Scrutiny Required?
Tenders	A	£72,000	Yes	Yes	Yes	Yes
	B	£90,000	No	No	No	No
	C	£92,000	No	No	No	No
	D					
	E					
	F					
	G					
	H					
	I					
	J					
Note: A minimum of four tender values is recommended						
Median Price. The price lying at the midpoint of the tender price range.						£90,000.00
Median Boundary. 85% of the Median Price						**£76,500.00**
Lowest Qualifying Price. The lowest tender above the Median Boundary						£90,000.00
Proximity Margin. Band A. 1% of the Lowest Qualifying Price with a minimum value of £1,000 and a maximum of £100,000.						£1,000.00
Proximity Boundary. The lowest Qualifying Price minus the proximity margin.						£89,000.00
Lowest Boundary. The lower of the Median Boundary and the Proximity Boundary.						**£76,500.00**

Figure 4

Example 5

In this final example no tenders have been identified for further scrutiny.

		Tender Value	Is tender below the Median Boundary?	Is tender below Proximity Boundary?	Is tender below Lowest Boundary?	Further Scrutiny Required?
Tenders	A	£100,000,000	Yes	No	No	No
	B	£110,000,000	Yes	No	No	No
	C	£115,000,000	No	No	No	No
	D	£120,000,000	No	No	No	No
	E					
	F					
	G					
	H					
	I					
	J					
Median Price. The price lying at the midpoint of the tender price range.						£112,500,000.00
Median Boundary. 85% of the Median Price						**£95,625,000.00**
Lowest Qualifying Price. The lowest tender above the Median Boundary						£100,000,000.00
Proximity Margin. Band D. 1% of the Lowest Qualifying Price with a minimum value of £1,000 and a maximum of £1,000,000.						£1,000,000.00
Proximity Boundary. The lowest Qualifying Price minus the proximity margin.						£99,000,000.00
Lowest Boundary. The lower of the Median Boundary and the Proximity Boundary.						**£95,625,000.00**

Figure 5

Annex E

Decision Flow Chart

Stage One

1. Is the estimated contract value above £30,000?	
NO: CA to consider whether process is appropriate before proceeding to Question 2.	**YES:** Proceed to Question 2

2. Have four or more tenders been received?	
NO: CA to consider if the process is appropriate before proceeding to Question 4	**YES:** Proceed to Question 3.

3. Calculate the **Median Price**.	
Value of Median Price:	

4. Calculate the **Median Boundary** figure by calculating 85% of the Median Price.	
Value of Median Boundary:	

5. Identify the **Lowest Qualifying Price** as the lowest tender above the Median boundary	
Value of Lowest Qualifying Price:	

6. Calculate the **Proximity Margin** as 1% of the lowest qualifying price (with a minimum value of £1,000 and a maximum value of £1,000,000 dependent on band)	
Value of Proximity Margin:	

7. Calculate the **Proximity Boundary** by subtracting the Proximity Margin from the Lowest Qualifying Price.	
Value of the Proximity Boundary:	

8. Determine the **Lowest Boundary** by selecting lower of Proximity Boundary and Median Boundary.	
Value of Lowest Boundary:	

9. Identify which of those tender figures fall below the Lowest Boundary as potential ALT.	
List of Tender Figures:	Below 2015 Regs threshold: If a potential ALT is identified as the MEAT

	then proceed to stage 2 for that tender only. Above OJEU threshold: All bids which are identified as being potentially abnormally low should be scrutinised under stage 2.

Stage Two

10. Write to bidder of potential ALT seeking explanation for the potential ALT, offer meeting if appropriate.	
Areas to be examined	

13. Conduct Risk Assessment using factors identified in bidder response against requirements of the contract.	
Reject	**Allow**

14. Inform bidder of outcome and reasons for decision.	
Reject	**Allow**

Record decision and carry on with tender evaluation without the excluded bid(s)	**Continue with tender evaluation as normal once assurance from bidder is received including completion of the form at Annex C.**