

Elements of abnormally low tenders: A comparative analysis of EU procurement directive and case law

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Abstract

Nowadays remains a challenge for the Contracting Authorities to organize procurement in a way that contracts are awarded to competitive tenders, without adverse effects on the contract implementation. Due to the descending pressure on prices, clients are receiving with increasing frequency bids that are substantially lower than estimated or than the other bids. The EU Directives on public procurement refer to this phenomenon through the term of "Abnormally Low Tenders" (ALT). Although the concept is regulated, there is no working definition of what constitutes an ALT in reality. Therefore dealing with ALT becomes more complex if we consider that both the Contracting Authorities and the bidders aim for low tenders. The questions that emerge in such situations is below what price should a tender be considered abnormal and what is the process to determine such tenders. In this context the issue of ALT has two main parts: the detection of ALT and the decision on whether to reject or not. However, the focal point of the problem, on which this article focuses, remains the identification of ALT, examine the potential of setting standards for the identification of ALT and formulate suggestions on how to improve the outcome of tendering processes.

Keywords: abnormally low tenderers, procurement, contracting authority, rejection.

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Academic Journal of Business, Administration, Law and Social Sciences ISSN 2410-3918 (print)

ISSN 2410-8693 (online)

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