



Department of
Finance
www.finance-ni.gov.uk

CPD

Procurement Guidance Note

PGN 03/13

(as amended)

Construction Works Procurement - Abnormally Low Tenders

Reissued: 13 June 2016



PROCUREMENT GUIDANCE NOTES

[Northern Ireland Public Procurement Policy \(NIPPP\)](#) was approved by the Northern Ireland Executive in 2002. In approving the policy, the Executive took the decision that legislation was not necessary to ensure that Departments, their Agencies, Non-Departmental Public Bodies and Public Corporations complied with the policy. Instead, it considered that compliance could be achieved by means of administrative direction.

Procurement Guidance Notes (PGNs) are the administrative means by which Departments are advised of procurement policy and best practice developments. They apply to those bodies subject to NIPPP and also provide useful guidance for other public sector bodies.

PGNs are developed by the Central Procurement Directorate (CPD), in consultation with the Centres of Procurement Expertise (CoPEs), and are subject to the approval of the Procurement Board.

Once endorsed by the Procurement Board, they are issued to the Departments for implementation and copied to CoPEs to develop, if necessary, underpinning procedures supporting the implementation of this guidance in their particular sector. PGNs are also published on the [Department of Finance \(DoF\) website](#).

The following PGN was endorsed by the Procurement Board with effect from 19 December 2013 for use by those bodies subject to NIPPP.

Revision History

First issued as a Procurement Advice Note (PAN 3)	18 June 2013
Reissued as Procurement Guidance Note PGN 03/13	19 December 2013
Revised	07 January 2015
Revised to make reference to The Public Contracts Regulations 2015	27 February 2015
Hyperlinks updated	16 November 2015
Reissued to reflect the restructuring of the Northern Ireland Government departments	13 June 2016

CONTENTS

1	Background.....	4
2	Application	4
3	Identifying Potential ALTs.....	5
4	When Potential ALTs are Identified Above EU Thresholds.....	6
5	When Potential ALTs are Identified Below EU Thresholds.....	6
6	Where Potential ALTs are to be Accepted (Above or Below EU Threshold)	7
7	Definitions	8
8	Further Advice	8
9	Further Information	9
	Annex A: Typical Text for Inclusion in ITT.....	10
	Annex B: Letter Template.....	11
	Annex C: Tenderer's Declaration.....	12
	Annex D: Worked Examples.....	13
	Annex E: Decision Flow Chart	16

Definition of Terminology

In the preparation of this guide, the term **contractor/supplier** has been used to denote an organisation that contracts directly with a Department, whether it is a supplier, a service provider or a construction contractor.

The term **Department** has been used to refer to those bodies subject to Northern Ireland Public Procurement Policy including Departments, Non-Departmental Public Bodies and Public Corporations. A full list of such bodies is available in Annex A of the [Northern Ireland Public Procurement Policy \(NIPPP\)](#).

1 BACKGROUND

- 1.1 The current economic downturn has created a difficult trading environment for contractors, with fewer tender and contract opportunities available. As a result, some firms are prepared to submit uneconomic or unsustainable tender prices in order to survive. Such practices significantly increase the risk of poor contract performance, create difficulties within supply chains and have a damaging effect on the industry.
- 1.2 While it is recognised that contractors may choose, on occasion, to submit a sub-economic tender for commercial reasons, CoPEs should discourage contractors from submitting prices that are so low that they put the delivery of a contract at risk. The following approaches should be adopted for Abnormally Low Tenders (ALTs).

2 APPLICATION

- 2.1 This Procurement Guidance Note applies to all construction works contracts where the estimated contract value is £30,000 or over.
- 2.2 The formula contained within this guidance is to be used by Departments on applicable construction works contracts to assist them in identifying a potential ALT. It must not be used as the sole basis upon which a tender is to be excluded.
- 2.3 Where fewer than four tenders are received, the Contracting Authority should consider if it is appropriate to use the formula identifying potential ALTs contained within this guidance. Where fewer than four tenders are received, the Contracting Authority should still assess the tenders using appropriate professional advice to consider whether any of these are abnormally low.
- 2.4 The tender prices to be used for the assessment of tenders must also be used for the process to identify potential ALTs contained within this guidance. It should be noted that for NEC3 contracts the tender price should include amounts for the Model Compensation Event.

- 2.5 This Procurement Guidance Note will be kept under review and will be updated when required. Please check the DoF website to ensure you have the latest version.
- 2.6 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.

3 IDENTIFYING POTENTIAL ALTS

- 3.1 ALTs are identified using appropriate professional advice based on the professional's knowledge of construction methods and costs and within their sector. To assist CoPEs in the identification of potential ALTs a process, set out in Annex A, has been provided which enables identification of tenders that are significantly below current market prices, and therefore potential ALTs. CoPEs should seek the advice of construction professionals with knowledge of the sector when determining whether a potential ALT is abnormally low.
- 3.2 The process identifies potential ALTs on the basis of the *adjusted average*. The *adjusted average* is calculated ignoring the highest tendered price.
- 3.3 There may be occasions where the application of the *adjusted average* would differentiate between tenders that are very closely priced. CoPEs should include a safety element (the *proximity margin*), based on the proximity to the *lowest qualifying price*, to avoid this occurrence.
- 3.4 Invitation to Tender (ITT) documents should advise tenderers that potential ALTs identified using this procedure will be excluded if, when requested, the tenderer does not explain to the satisfaction of the Project Manager (PM) the aspect(s) of the tender that appear abnormally low (see Annex A).
- 3.5 Where a tender received is more than 15% below the *adjusted average* and outside the *proximity margin*, it should be considered to be a potential ALT and the tenderer advised accordingly (see Annex B).

4 WHEN POTENTIAL ALTS ARE IDENTIFIED ABOVE EU THRESHOLDS

4.1 Construction works contracts which have a value above the [EU Procurement Thresholds](#) must be considered in accordance with the [Public Contracts Regulations 2015](#). Article 69¹ of these regulations requires Contracting Authorities to ensure tenderers explain prices that appear to be abnormally low.

4.2 The explanations required for aspects considered abnormally low in Article 69 of the EU Directive on Public Procurement (2014/24/EU) include:

- the economics of the construction method and costs;
- exceptionally favourable conditions available;
- originality of the proposed solution or methods;
- compliance with environmental, social and labour law;
- subcontracting arrangements; and
- state aid provided.

The tender may be rejected only where the evidence provided does not satisfactorily account for the low price.

5 WHEN POTENTIAL ALTS ARE IDENTIFIED BELOW EU THRESHOLDS

5.1 Tenders identified as potential ALTs must be subject to additional scrutiny to ensure that the tenderer can deliver the works required for the cost quoted.

5.2 The PM must identify any elements of the tender that appear sub-economic and seek explanation how the tenderer will be able to complete the works

¹ Article 84 of [The Utilities Contracts Regulations 2016](#) has similar provisions.

required for the tender price. If multiple elements of the tender appear to be low, the PM may seek information on, and explanation of, the following items:

- economics of the construction method/detailed cost breakdown;
- technical solutions or exceptionally favourable conditions available; and
- compliance with contractual and legislative requirements.

5.3 The information sought should be proportionate to the value of the works and degree of deviation from a normal market price.

5.4 If after consulting the tenderer the PM has not received a reasonable explanation of how the tenderer can deliver the works required, for the tender price submitted, the tender should be rejected unless the tenderer can clearly demonstrate that it has available sufficient cash flow and financial resources to absorb any potential loss.

5.5 The PM should record reasons why the tender has been rejected or otherwise.

6 WHERE POTENTIAL ALTS ARE TO BE ACCEPTED (ABOVE OR BELOW EU THRESHOLD)

6.1 To ensure that adequate scrutiny of a potential ALT is provided the following steps must be taken prior to award of a contract to a tender that is identified as a potential ALT:

- PM must notify the Head of CoPE and Head of Procurement of the intention to award a contract to a potential ALT;
- confirmation of the tender price must be provided by the Contractor's Senior Management to the CoPE Head of Procurement (see Annex C) who will then advise the Head of CoPE on the necessary actions; and
- Departmental recognition of the potential requirement for enhanced contract management resources to be put in place (for example, additional site supervision).

6.2 Following contract award, the PM must:

- provide regular reports on contract progress to the Head of CoPE; and
- consider recording the risks associated with a low tender price on the Project Risk Register.

7 DEFINITIONS

7.1 The **adjusted average** price is the average of all the tender prices provided excluding the highest tender price.

7.2 The **lowest qualifying price** is the lowest price submitted that is more than or equal to 85% of the *adjusted average price*.

7.3 The **proximity margin** should be calculated on the basis of 1% of the *lowest qualifying price*, with a minimum value of £1,000 and a maximum value of £100,000.

8 FURTHER ADVICE

8.1 Worked examples are provided at Annex D to illustrate the application of the processes within this Guidance Note.

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

8.3 To assist in the identification of ALTs, a spreadsheet calculator (Version 3) is provided on CPD's dedicated webpage for this Procurement Guidance Note. Whilst every effort has been made to ensure that this calculator is accurate and up to date, CPD accepts no liability for the use of this tool. CPD recommends that all calculations are independently verified.

8.4 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.

9 FURTHER INFORMATION

Any queries on this guide should be addressed to:

Construction Procurement Policy Branch

Central Procurement Directorate

2nd Floor East

Clare House

303 Airport Road West

Belfast, BT3 9ED

Phone: 028 9081 6871

Email: ConstructionProcurementPolicy@finance-ni.gov.uk

ANNEX A: TYPICAL TEXT FOR INCLUSION IN ITT

Abnormally Low Tenders

Any tender price that:

- is more than 15% lower than the *adjusted average price*; 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 **adjusted average price** is the average of all the tender prices provided excluding the highest tender price.

The **proximity margin** shall be limited to a minimum value of £1,000 and a maximum value of £100,000.

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

Where fewer than four tenders are received, the Contracting Authority reserves the right not to apply this process.

ANNEX B: LETTER TEMPLATE

Dear [Name],

The price that you submitted with your tender dated [date] for [project name] amounting to [£] is abnormally low.

The adjusted average 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 adjusted average price; 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 may be excluded from this competition if adequate information to justify the price tendered is not provided.

You are therefore required to provide the following details to demonstrate your ability to complete the works for your tender price.....

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.*

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 and associated services pertaining to this tender as detailed in the tender package.

I have also considered the contract provisions in respect of 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 subcontractors will be subject to scrutiny by the Employer.

I have read CPD's Procurement Guidance Note [PGN 01/12: Contract Management Procedures and Principles](#) with particular reference to poor performance.

I understand that the poor performance protocol, as stated in the tender package, will apply to any contract awarded as a result of this competition.

I understand that, in the event that my tender is successful, failure to deliver the works in accordance with the contract may be considered poor performance and could result in the exclusion of my firm from tendering for future public sector works contracts.

Signed

[CEO/Managing Director/Owner]

ANNEX D: WORKED EXAMPLES

Some worked examples of the calculation for Abnormally Low Tenders

Example 1:

	Tender Value	Is tender below the Adjusted Average Boundary? (= £3,094,000)	Is tender below the Proximity Boundary? (= £3,465,000)	Further Scrutiny Required? If the two preceding columns both read yes, then the tender should be subject to subject to further scrutiny
Tenders	£3,000,000	Yes	Yes	Yes
	£3,500,000	No	No	No
	£3,800,000	No	No	No
	£3,900,000	No	No	No
	£4,000,000	No	No	No
	£4,200,000	No	No	No
Adjusted Average ...the average of those tenders received, excluding the highest				= £3,640,000
Adjusted Average Boundary ...85% of the Adjusted Average (£3,640,000)				= £3,094,000
Lowest Qualifying Price ...the lowest tender that is above the Adjusted Average Boundary (£3,094,000)				= £3,500,000
Proximity Margin ...1% of the Lowest Qualifying Price (£3,500,000) , but with a minimum value of £1,000 and a maximum value of £100,000				= £35,000
Proximity Boundary ...the Lowest Qualifying Price (£3,500,000) minus the Proximity Margin (£35,000)				= £3,465,000
Lowest Boundary ...the lower of the Adjusted Average Boundary (£3,094,000) and the Proximity Boundary (£3,465,000)				= £3,094,000

Conclusion: That the lowest tender (£3,000,000) should be subject to further scrutiny and possible exclusion as it is below both the **Adjusted Average Boundary (£3,094,000)** and the **Proximity Boundary (£3,465,000)** and is, therefore, below the **Lowest Boundary (£3,094,000)**.

Example 2:

	Tender Value	Is tender below the Adjusted Average Boundary? (= £3,677,100)	Is tender below the Proximity Boundary? (= £3,643,200)	Further Scrutiny Required? If the two preceding columns both read yes, then the tender should be subject to subject to further scrutiny
Tenders	£3,650,000	Yes	No	No
	£3,680,000	No	No	No
	£3,700,000	No	No	No
	£5,000,000	No	No	No
	£5,600,000	No	No	No
	£5,700,000	No	No	No
Adjusted Average ...the average of those tenders received, excluding the highest				= £4,326,000
Adjusted Average Boundary ...85% of the Adjusted Average (£4,326,000)				= £3,677,100
Lowest Qualifying Price ...the lowest tender that is above the Adjusted Average Boundary (£3,677,100)				= £3,680,000
Proximity Margin ...1% of the Lowest Qualifying Price (£3,680,000) , but with a minimum value of £1,000 and a maximum value of £100,000				= £36,800
Proximity Boundary ...the Lowest Qualifying Price (£3,680,000) minus the Proximity Margin (£36,800)				= £3,643,200
Lowest Boundary ...the lower of the Adjusted Average Boundary (£3,677,100) and the Proximity Boundary (£3,643,200)				= £3,643,200

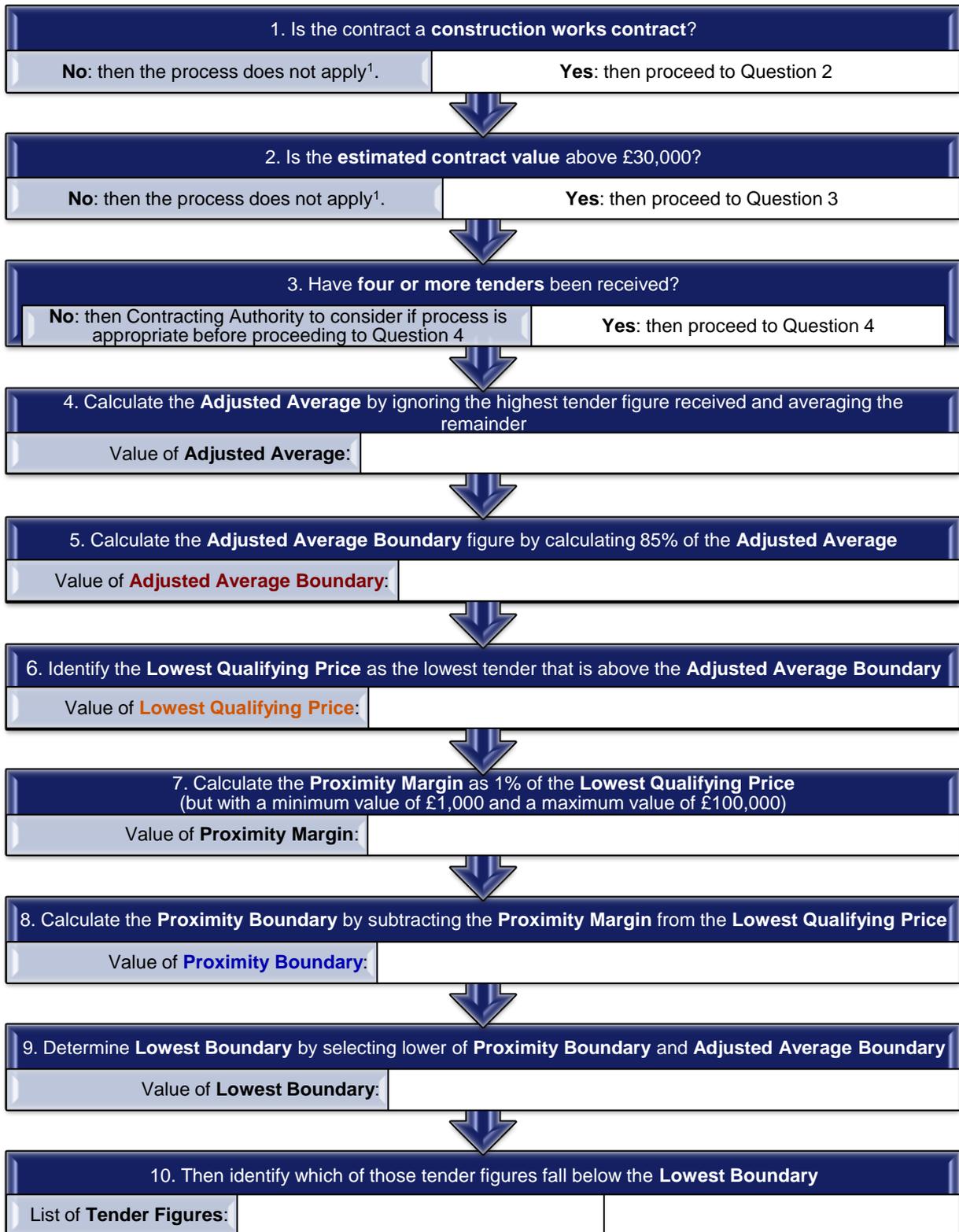
Conclusion: None of the tenders should be subject to automatic further scrutiny as none of them are below the **Lowest Boundary (£3,643,200)**. Although the lowest tender (£3,650,000) is below the **Adjusted Average Boundary (£3,677,100)**, it is above the **Proximity Boundary (£3,643,200)**. The successful tender is £3,650,000.

Example 3:

	Tender Value	Is tender below the Adjusted Average Boundary? (= £3,676,420)	Is tender below the Proximity Boundary? (= £3,663,000)	Further Scrutiny Required? If the two preceding columns both read yes, then the tender should be subject to subject to further scrutiny
Tenders	£3,662,900	Yes	Yes	Yes
	£3,663,100	Yes	No	No
	£3,700,000	No	No	No
	£5,000,000	No	No	No
	£5,600,000	No	No	No
	£5,700,000	No	No	No
Adjusted Average ...the average of those tenders received, excluding the highest				= £4,325,200
Adjusted Average Boundary ...85% of the Adjusted Average (£4,325,200)				= £3,676,420
Lowest Qualifying Price ...the lowest tender that is above the Adjusted Average Boundary (£3,676,420)				= £3,700,000
Proximity Margin ...1% of the Lowest Qualifying Price (£3,700,000) , but with a minimum value of £1,000 and a maximum value of £100,000				= £37,000
Proximity Boundary ...the Lowest Qualifying Price (£3,700,000) minus the Proximity Margin (£37,000)				= £3,663,000
Lowest Boundary ...the lower of the Adjusted Average Boundary (£3,676,420) and the Proximity Boundary (£3,663,000)				= £3,663,000

Conclusion: That the lowest tender (£3,662,900) should be subject to further scrutiny and possible exclusion as it is below the **Lowest Boundary (£3,663,000)**. Although the second lowest tender (£3,663,100) is below the **Adjusted Average Boundary (£3,676,420)**, it is above the **Proximity Boundary (£3,663,000)** and should, therefore, not be automatically subject to further scrutiny.

ANNEX E: DECISION FLOW CHART



The figures in Box 10 identify the potential **abnormally low tenders (ALTs)** and their possible exclusion must be considered on a case by case basis.

¹ Note other processes may be required under Northern Ireland Public Procurement Policy.