
STATUTORY INSTRUMENTS

1989 No. 1588

LOCAL GOVERNMENT, ENGLAND AND WALES

The Local Government (Direct Labour Organisations) (Competition) Regulations 1989

<i>Made</i>	- - - -	<i>2nd September 1989</i>
<i>Laid before Parliament</i>		<i>8th September 1989</i>
<i>Coming into force</i>	- -	<i>1st October 1989</i>

The Secretary of State for the Environment, as respects England, and the Secretary of State for Wales, as respects Wales, in exercise of the powers conferred by sections 7(1), (2), (4), (5) and (6) and 9(3) of the Local Government, Planning and Land Act 1980⁽¹⁾ and all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Local Government (Direct Labour Organisations) (Competition) Regulations 1989 and shall come into force on 1st October 1989.

(2) These Regulations extend to England and Wales.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Local Government, Planning and Land Act 1980;

“contractual highway work” means general highway works carried out by a local authority or development body by placing a contract for the doing of the work by another person (either directly or, in whole or in part, through subcontractors) which provides, or provides principally, for the carrying out of general highway works, the value of which does not exceed £25,000;

“emergency work” means—

- (i) in relation to work to be done before 1st April 1990 work of any description whose necessity could not reasonably have been foreseen by the local authority or development body concerned and which is required to avert, alleviate or eradicate in their area, or any part of it, the effects or potential effects of any emergency or disaster involving or likely to involve risk of serious damage to or destruction of property or risk of injury or danger to health or life; and

(1) 1980 c. 65, section 7 was amended by the Local Government Act 1988 (1988 c. 9).

- (ii) in relation to work to be done on or after 1st April 1990 work of any description the necessity for which could not reasonably have been foreseen by the local authority or development body concerned and which is—
 - (a) required to avert, alleviate or eradicate in their area, or any part of it, the effects or potential effects of any emergency or disaster which involves or is likely to involve risk of serious damage to or destruction of property or risk of injury or danger to health or life;
 - (b) required to be put in hand as a matter of urgency within 48 hours of the emergency or disaster occurring; and
 - (c) not work on a scale or of a nature normally undertaken by that authority or development body.

“estimated cost” in relation to a job, means the aggregate of the amounts which a local authority or development body will credit to their DLO revenue account in respect of the carrying out of all the items of construction or maintenance work comprised in that job—

- (i) so far as such amounts will fall to be determined in accordance with a written statement prepared in compliance with section 9(2)(a) of the Act, as so determined; and
- (ii) so far as such amounts will fall to be determined in accordance with a method specified in a written statement prepared in accordance with section 9(2)(b) of the Act, as estimated in accordance with that method;

“general highway works” has the meaning given to it in section 10(3) of the Act;

“job” means all the functional work which can reasonably be carried out most economically and efficiently under one arrangement;

“relevant highway work” means general highway works comprised in a works contract which provides, or provides principally for, or in a job which consists, or consists principally of, general highway works, and for which the value of the contract or the estimated cost of the job does not exceed £25,000;

“works of maintenance” means works of maintenance within the meaning of the Local Authorities (Goods and Services) Act 1970(2) not being general highway works or the maintenance of a sewer;

“works of new construction” means building or civil engineering works of any description not being general highway works, the construction of a sewer or works of maintenance.

(2) Subject to paragraph (3) below, in ascertaining (for the purposes of these Regulations) the description of work for which a contract principally provides, or of which a job principally consists, regard shall be had only to—

(a) the value of the contract so far as it is attributable to works of each description mentioned in paragraphs (a) to (d) of regulation 3 and comprised in the contract, or

(b) the estimated cost of the job so far as it is attributable to works of each description mentioned in paragraphs (a) to (d) of regulation 3 and comprised in the job, and if the value of the contract or the estimated cost of the job so far as attributable to works of two or more descriptions is the same, that contract or job shall be treated as providing principally for works of each of those descriptions.

(3) In ascertaining for the purposes of paragraph (1) above or regulation 6 or 8 the description of work for which a contract principally provides, or of which a job principally consists, no regard shall be had to the value of the contract or the estimated cost of the job so far as in either case it is attributable to the construction or maintenance of a sewer.

Prescribed amounts for works contracts

3. For the purposes of section 7(1) of the Act (prescribed amounts for certain works contracts) the following amounts are prescribed for works contracts of the following descriptions, namely for a contract which provides, or provides principally, for the carrying out of—

- (a) general highway works, £25,000;
- (b) the construction or maintenance of a sewer, £50,000;
- (c) works of new construction, £50,000;
- (d) works of maintenance, £10,000.

Treatment of certain works contracts as a single contract

4. For the purposes of determining whether the value of a works contract exceeds the amount prescribed by regulation 3 the value of any other contract made within the preceding 6 months by the local authority or development body in question for work of the same or similar description on the same site or surface or on an adjacent site or surface shall be treated as forming part of the value of that contract.

Requirement to tender for certain works contracts

5. The following condition is prescribed for the purposes of section 7(1)(b) of the Act (conditions to be complied with in the case of works contracts whose value is equal to or less than the prescribed amount) in relation to a works contract to which this regulation applies, namely, that the contract is entered into as the result of acceptance of a tender within the meaning of section 7(3) of the Act.

Application of Regulation 5

6.—(1) Regulation 5 applies—

- (a) to any works contract of a value which does not exceed £25,000 providing or providing principally for the carrying out of general highway works if the value of the contract together with the value of all relevant highway work previously undertaken by the authority otherwise than in accordance with section 7 or the conditions mentioned in section 9(3)(a) of the Act in the same financial year exceeds the relevant limit;
- (b) to any works contract of a value which does not exceed £50,000 providing or providing principally for the carrying out of works of new construction;
- (c) to any works contract of a value which does not exceed £10,000 providing or providing principally for the carrying out of works of maintenance.

(2) For the purpose of paragraph (1)(a) the relevant limit is 40% of the aggregate value of all relevant highway work undertaken and all contractual highway work carried out by the authority in the immediately preceding financial year.

Exempted works contracts

7.—(1) Section 7(1) of the Act shall not apply to works contracts of any of the following descriptions—

- (a) a contract for the carrying out of emergency work;
- (b) a contract for the gritting of or the clearing of snow from highways;
- (c) a contract which satisfies the following conditions—

- (i) it is a contract for the carrying out of works of new construction, general highway works, or for the construction of a sewer or it is a contract for works of maintenance to be carried out before 1st April 1990;
 - (ii) it is a further contract the value of which does not exceed by more than 10% the value of a former contract of a similar description awarded to the local authority at any time in the immediately preceding period of 12 months and in relation to which the value of each of the separate items of work comprised and priced in the contract does not exceed by more than 10% the value of each corresponding separate item of work (if any) comprised and priced in the former contract;
 - (iii) except in the case of a contract for works of maintenance, the work comprised in the contract is to be carried out on the same site or surface as the work comprised in the former contract or on sites or surfaces adjacent to those on which the work comprised in the former contract has been or is to be carried out;
- (2) For the purposes of this regulation a contract is a former contract if, and only if—
- (a) it was made as the result of an invitation to tender which was extended to at least three other persons who are not, or include at least three other persons who are not, local authorities or development bodies;
 - (b) the local authority submitted the lowest tender following that invitation;
 - (c) it has not been renewed (either by extension or the making of a new contract for work of a similar description) unless the invitation to tender, as a result of which it was awarded, specifically referred to the award to the successful contractor of one or more further contracts.

Functional work

8.—(1) Subject to regulation 9, a local authority or development body may not, unless they have first complied with the conditions mentioned in section 9(3)(a) of the Act as well as with those in section 9(2), undertake functional work of the following descriptions—

- (a) a job consisting or consisting principally of general highway works where the estimated cost of the job exceeds £25,000;
- (b) a job consisting or consisting principally of the construction or maintenance of a sewer where the estimated cost of the job exceeds £50,000;
- (c) a job consisting or consisting principally of works of new construction;
- (d) a job consisting or consisting principally of works of maintenance;
- (e) a job consisting or consisting principally of general highway works where the estimated cost of the job does not exceed £25,000 if the estimated cost of the job together with the aggregate value of all relevant highway work previously undertaken by the authority or body otherwise than in accordance with section 7 or the conditions mentioned in section 9(3)(a) of the Act in the same financial year exceeds the relevant limit;

(2) For the purpose of paragraph (1)(e) the relevant limit is 40% of the aggregate value of all relevant highway work undertaken and all contractual highway work carried out by that authority or body in the immediately preceding financial year;

Exempted functional work

9.—(1) Regulation 8 above shall not apply to functional work of the following descriptions, namely—

- (a) emergency work;

- (b) the gritting of or the clearing of snow from highways;
- (c) work comprising a job which satisfies the following conditions—
 - (i) it is a job for the carrying out of works of new construction, general highway works, or for the construction of a sewer or it is a job for works of maintenance to be carried out before 1st April 1990;
 - (ii) it is a further job the estimated cost of which does not exceed by more than 10% the estimated cost of a former job of a similar description undertaken by the local authority or development body in question in the immediately preceding 12 months and in relation to which the estimated cost of each separate item of work comprised and priced in the job does not exceed by more than 10% the estimated cost of each corresponding item of work (if any) comprised and priced in the former job;
 - (iii) except in the case of a job which is a work of maintenance, the work comprised in the job is to be carried out on the same site or surface as the work comprised in the former job or on sites or surfaces adjacent to those on which the work comprised in the former job has been or is to be carried out.
- (2) For the purposes of this regulation a job is a former job, if and only if—
 - (a) it was undertaken following an invitation to tender which was extended to at least three other persons who were not, or included at least three other persons who were not, local authorities or development bodies;
 - (b) the estimated cost of the job submitted by the authority or development body was lower than the lowest tender submitted following that invitation; and
 - (c) the job has not been renewed (either by extension of time or the undertaking of a new job of a similar description) unless the invitation to tender following which it was undertaken specifically referred to the award to the successful tenderer of one or more further contracts

Revocation

10. The Local Government (Direct Labour Organisations) (Competition) Regulations 1983⁽³⁾, the Local Government (Direct Labour Organisations) (Competition) (Amendment) Regulations 1987⁽⁴⁾ and the Local Government (Direct Labour Organisations) (Competition) (Amendment) Regulations 1988⁽⁵⁾ are hereby revoked.

1st September 1989

Michael Howard
Minister of State,
Department of the Environment

2nd September 1989

Peter Walker
Secretary of State for Wales

⁽³⁾ S.I. 1983/685.
⁽⁴⁾ S.I. 1987/181.
⁽⁵⁾ S.I. 1988/160.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations consolidate with amendments the Local Government (Direct Labour Organisations) (Competition) Regulations 1983, the Local Government (Direct Labour Organisations) (Competition) (Amendment) Regulations 1987 and the Local Government (Direct Labour Organisations) (Competition) (Amendment) Regulations 1988, all of which are revoked.

The main changes are contained in regulations 6, 7, 8 and 9.

Regulation 6 applies competitive tendering requirements to works contracts for general highway works, works of new construction and works of maintenance the value of which is equal to or less than the financial limit specified. The main change is to remove any exemption for contracts for works of new construction and works of maintenance by reference to a percentage of the value of such contracts undertaken in the previous financial year.

Regulation 7 describes conditions which a works contract must satisfy to be exempt from the competitive tendering requirements. Contracts for maintenance work to be undertaken on or after 1st April 1990 are now removed from exemption.

Regulation 8 prescribes the conditions which a local authority or development body must comply with before undertaking functional work. The main change is to apply the competitive tendering requirements to all works of new construction and works of maintenance regardless of value.

Regulation 9 specifies the descriptions of functional work which are exempt from the competitive tendering requirements. Jobs of maintenance work to be undertaken on or after 1st April 1990 are now removed from the exemption.