



Local Government Act 1988

1988 CHAPTER 9

PART I

COMPETITION

Functional work: restrictions

6 Functional work: restrictions.

- (1) A defined authority may not carry out functional work falling within a defined activity unless each of the six conditions is fulfilled.
- (2) The conditions mentioned in subsection (1) above are those set out in section 7 below, which shall have effect subject to section 8 below.
- (3) This section applies only if the work falls within such a defined activity, is of such a description, is proposed to be carried out by such defined authority or authorities, and is proposed to be carried out on or after such date (not preceding 1st April 1989), as the Secretary of State may by regulations specify.
- (4) The regulations may provide that where a defined authority propose to carry out functional work which falls within a defined activity specified in the regulations (whether or not by virtue of section 2(5) or (7) above) and to which this section would not otherwise apply, it shall (if the authority so decide) be treated as work to which this section applies.
- (5) This section applies even if the work forms part of work begun before any date specified in the regulations, but references in this section and the following provisions of this Part to the work do not include references to any work carried out before such date.

Modifications etc. (not altering text)

- C1** S. 6 applied (E.W.) by S.I. 1988/1371, **reg. 6**
- C2** S. 6 applied (S.) by S.I. 1990/1484, **reg. 3(1)(3)**

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C3 S. 6 applied by S.I. 1990/1564, reg. 2(1)

7 The conditions.

- (1) The first condition is that, before carrying out the work, the authority published, in at least one newspaper circulating in the locality in which the work is to be carried out and at least one publication circulating among persons who carry out work of the kind concerned, a notice containing the matters mentioned in subsection (2) below.
- (2) The matters are—
 - (a) a brief description of the work,
 - (b) a statement that during a period specified in the notice any person may inspect a detailed specification of the work free of charge at a place and time specified in the notice,
 - (c) a statement that during that period any person will be supplied with a copy of the detailed specification on request and on payment of such charge as is specified in the notice,
 - (d) a statement that any person who may wish to carry out the work should notify the authority of that fact within a period specified in the notice, and
 - (e) a statement that the authority intend to make, in accordance with the third condition, an invitation to carry out the work.
- (3) The second condition is that—
 - (a) the periods, place, time and charge specified in the notice are reasonable,
 - (b) before carrying out the work, the authority made a detailed specification of the work available for inspection, and copies of it available for supply, in accordance with the notice, and
 - (c) the detailed specification includes a statement of the period during which the work is to be carried out.
- (4) The third condition is that, if any person notified the authority in accordance with the statement under subsection (2)(d) above, the authority made an invitation to carry out the work in accordance with the following rules—
 - (a) the invitation was made by the authority before carrying out the work, and not less than 3 nor more than 6 months after complying with the first condition;
 - (b) if more than three persons who are not defined authorities notified the authority, at least three of them were invited;
 - (c) if less than four persons who are not defined authorities notified the authority, each of them was invited;
 - (d) if a defined authority or defined authorities notified the authority, such one or more (if any) of them as the authority decided was invited.
- (5) The Secretary of State may by regulations amend paragraphs (b) and (c) of subsection (4) above so as to vary the number of persons who are not defined authorities who must be invited to carry out work in particular circumstances.
- (6) The fourth condition is that before carrying out the work the authority, through their direct labour organisation or a similar organisation, prepared a written bid indicating their wish to carry out the work.
- (7) The fifth condition is that the authority, in reaching the decision that they should carry out the work and in doing anything else (whether or not required by this Part) in

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connection with the work before reaching the decision, did not act in a manner having the effect or intended or likely to have the effect of restricting, distorting or preventing competition.

- (8) The sixth condition is that in carrying out the work the authority comply with the detailed specification of it mentioned in subsections (2) and (3) above.

Modifications etc. (not altering text)

- C4** S. 7 restricted (W.) (1.4.1996) by S.I. 1996/265, **reg. 3**
- C5** S. 7(2)(b)(d): power to modify conferred (4.1.1993) by Local Government Act 1992 (c. 19), s. 9(3)(c); S.I. 1992/3241, **art.2**
- C6** S. 7(3) restricted (17.8.1995) by S.I. 1995/1973, **reg. 5**
- C7** S. 7(4) modified (11.11.1994) by S.I. 1994/2888, **art. 3(3)**
S. 7(4) modified (20.7.1995) by S.I. 1995/1915, **art. 5(3)**
- C8** S. 7(4)(a) modified (10.11.1994) by S.I. 1994/2884, **art. 3(3)**
- C9** S. 7(8) applied (9.1.1995) by S.I. 1994/3167, **reg. 14(5)(a)**

8 The conditions: further provisions.

- (1) If the Secretary of State so provides by regulations, the second condition shall not be treated as fulfilled if the period stated by virtue of section 7(3)(c) above—
- exceeds a period specified in the regulations;
 - is less than another period so specified.
- (2) If the Secretary of State so provides by regulations, the third condition shall not be treated as fulfilled unless—
- the contents of any invitation included prescribed matters (which may relate to the time allowed for responding, the method of responding, or otherwise), and
 - if any response was made to any invitation, before carrying out the work the authority complied with prescribed requirements as to responses (which may include requirements to disregard certain responses, requirements about the keeping or opening of responses, or otherwise);
- and “prescribed” here means prescribed by the regulations.
- (3) The fourth condition shall not be treated as fulfilled unless the bid is prepared in accordance with the following rules—
- if the authority would, assuming it were an independent contractor, charge for carrying out the work, the bid must provide for an item to be credited to any account kept (or to be kept) by the authority as regards the work under section 9 below,
 - if the authority would, assuming it were an independent contractor, pay for the right to carry out the work, the bid must provide for an item to be debited to any such account,
 - in the case of an item to be credited, the bid must state either what the authority intend as its maximum amount or the method by which they intend to calculate its maximum amount,
 - in the case of an item to be debited, the bid must state either what they intend as its minimum amount or the method by which they intend to calculate its minimum amount, and

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- (e) a statement mentioned in paragraph (c) or (d) above may include provision for any intended amount or method to vary with changes in circumstances.
- (4) If the Secretary of State so provides by regulations, the fourth condition shall not be treated as fulfilled unless before carrying out the work the authority complied with requirements prescribed by the regulations as to the bid (which may include requirements about the preparation, keeping or opening of the bid, or otherwise).
- (5) If the Secretary of State so provides by regulations, the fifth condition shall not be treated as fulfilled unless—
 - (a) in accordance with prescribed requirements there is prepared and certified a document which appraises and fulfils such other conditions as may be prescribed with respect to responses falling within subsection (2) above and the bid referred to in subsection (3) above; and
 - (b) at such time or times (prior to reaching the decision referred to in section 7(7) above) as may be prescribed, copies of that document are provided or made available in accordance with any prescribed requirements;and “prescribed” here means prescribed by the regulations.
- (6) Where any document is provided or made available in accordance with the requirements of regulations under subsection (5) above, the publication thereby of any defamatory matter in the document shall be privileged unless the publication is proved to be made with malice.

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