



Local Government Act 1988

1988 CHAPTER 9

PART I

COMPETITION

Works contracts: restrictions

4 **Works contracts: restrictions.** **E+W**

- (1) If a defined authority (a bidding authority) propose to enter into a works contract with another person (the other party) and under the contract the bidding authority are to carry out work falling within a defined activity, the bidding authority may not enter into the contract unless—
 - (a) the first or second alternative of the first condition is fulfilled, and
 - (b) the second condition is fulfilled.
- (2) The first alternative of the first condition is that—
 - (a) the contract is made by acceptance of the bidding authority's offer to carry out the work,
 - (b) the bidding authority made the offer in response to an invitation by the other party to submit such offers, and
 - (c) the invitation was made to at least three other persons who are willing to carry out work of the kind concerned, and who are not defined authorities or include at least three persons who are not defined authorities.
- (3) The Secretary of State may by regulations vary—
 - (a) the number of persons to whom an invitation must be made under subsection (2) (c) above; and
 - (b) the minimum number of those persons who are not to be defined authorities.
- (4) The second alternative of the first condition is that before entering into the contract the other party 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

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who carry out work of the kind concerned, a notice inviting persons to submit offers to carry out the work.

- (5) The second condition is that the other party, in entering into the contract and in doing anything else (whether or not required by this Part) in connection with the contract before entering into it, did not act in a manner having the effect or intended or likely to have the effect of restricting, distorting or preventing competition.
- (6) Anything which (apart from this subsection) would amount to a failure to fulfil the first or second alternative of the first condition, or the second condition, shall not do so unless, at the time the contract is proposed to be entered into, the bidding authority are aware of the failure.
- (7) This section applies where it is proposed to enter into the works contract on or after 1st April 1989.

Modifications etc. (not altering text)

- C5 S. 4 modified by S.I. 1989/2488, art. 3
 C6 S. 4(1) modified (E.W.) by S.I. 1991/719, reg.6(3)(a)

4 Works contracts: restrictions. S

- (1) If a defined authority (a bidding authority) propose to enter into a works contract with another person (the other party) and under the contract the bidding authority are to carry out work falling within a defined activity, the bidding authority may not enter into the contract unless—
 - (a) the first or second alternative of the first condition is fulfilled, and
 - (b) the second condition is fulfilled.
- (2) The first alternative of the first condition is that—
 - (a) the contract is made by acceptance of the bidding authority's offer to carry out the work,
 - (b) the bidding authority made the offer in response to an invitation by the other party to submit such offers, and
 - (c) the invitation was made to at least three other persons who are willing to carry out work of the kind concerned, and who are not defined authorities or include at least three persons who are not defined authorities.
- (3) The Secretary of State may by regulations vary—
 - (a) the number of persons to whom an invitation must be made under subsection (2) (c) above; and
 - (b) the minimum number of those persons who are not to be defined authorities.
- (4) The second alternative of the first condition is that before entering into the contract the other party 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 inviting persons to submit offers to carry out the work.
- (5) The second condition is that the other party, in entering into the contract and in doing anything else (whether or not required by this Part) in connection with the contract

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before entering into it, did not act in a manner having the effect or intended or likely to have the effect of restricting, distorting or preventing competition.

- (6) Anything which (apart from this subsection) would amount to a failure to fulfil the first or second alternative of the first condition, or the second condition, shall not do so unless, at the time the contract is proposed to be entered into, the bidding authority are aware of the failure.
- (7) This section applies where it is proposed to enter into the works contract on or after 1st April 1989.

Extent Information

- E1** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Modifications etc. (not altering text)

- C9** S. 4 modified by S.I. 1989/2488, **art. 3**

5 Works contracts: transitional.

- (1) Where—
- a defined authority (as a bidding authority) entered into a works contract before 1st April 1989 (and whether or not before the passing of this Act), and
 - had they entered into the contract on 1st April 1989 they would have infringed section 4 above,
- on that date the parties to the contract shall cease to have power to carry it out.
- (2) If the contract is governed by English law and the parties to it do not make other provision before 1st April 1989, the ^{M1}Law Reform (Frustrated Contracts) Act 1943 shall apply to the contract with effect from that date.

Modifications etc. (not altering text)

- C7** S. 5 modified by S.I. 1989/2488, **art. 3**
- C8** S. 5 modified (20.7.1995) by S.I. 1995/1915, **art. 6**
S. 5 modified (23.6.1994) by S.I. 1994/1671, **art. 4**
S. 5 modified (10.11.1994) by 1994/2884, **art. 4**
S. 5 modified (11.11.1994) by 1994/2888, **art. 4**

Marginal Citations

- M1** 1943 c. 40.

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