
STATUTORY INSTRUMENTS

1993 No. 848

**LOCAL GOVERNMENT, ENGLAND AND WALES
LOCAL GOVERNMENT, SCOTLAND**

**The Local Government (Direct Service
Organisations) (Competition) Regulations 1993**

| | | |
|-------------------------------|---------|------------------------|
| <i>Made</i> | - - - - | <i>24th March 1993</i> |
| <i>Laid before Parliament</i> | | <i>29th March 1993</i> |
| <i>Coming into force</i> | - - | <i>10th May 1993</i> |

The Secretary of State for the Environment, in relation to England, the Secretary of State for Scotland, in relation to Scotland, and the Secretary of State for Wales, in relation to Wales, in exercise of the powers conferred upon them by section 9(4)(aa) of the Local Government, Planning and Land Act 1980(1), section 8(2)(a) of the Local Government Act 1988(2), and section 9 of the Local Government Act 1992(3), and of all other powers enabling them in that behalf, hereby make the following Regulations:—

Title, commencement and interpretation

1.—(1) These Regulations may be cited as the Local Government (Direct Service Organisations) (Competition) Regulations 1993 and shall come into force on 10th May 1993.

(2) In these Regulations—

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

“the 1988 Act” means the Local Government Act 1988;

“the 1992 Act” means the Local Government Act 1992;

“allowable cost” means any amount calculated or estimated in accordance with regulation 9 or 10;

“bid” means the bid for the work prepared by the local authority through their direct service organisation;

“contractor” means any person who is invited by the local authority to tender for the work;

(1) 1980 c. 65; section 9(4)(aa) was inserted by the Local Government Act 1988 (c. 9), section 32, and Schedule 6, paragraph 3(3).
(2) 1988 c. 9.
(3) 1992 c. 19.

“direct service organisation” means that part of the local authority’s workforce which is equipped to carry out the work;

“local authority” means any authority or body which is a defined authority for the purposes of Part I of the 1988 Act or a development body for the purposes of Part III of the 1980 Act;

“prospective cost” means any amount calculated or estimated in accordance with regulation 12, 13 or 14;

“qualifying tender” means any contractor’s tender for the work which meets the qualification mentioned in regulation 7(b);

“the notional premium” means an amount equal to the lowest of the costs mentioned in regulation 6(b);

“the present value of savings” means with respect to any qualifying tender the amount calculated in accordance with paragraph 4 of the Schedule;

“the 1982 Regulations” means for England and Wales the Local Government (Compensation for Premature Retirement) Regulations 1982(4), the Local Government (Compensation for Redundancy and Premature Retirement) Regulations 1984(5), the Local Government Reorganisation (Compensation) Regulations 1986(6), the Local Government (Superannuation and Compensation) (Amendment) Regulations 1988(7), the Local Government (Superannuation and Compensation) (Amendment) Regulations 1989(8), and the Local Government (Compensation for Redundancy and Premature Retirement) (Amendment) Regulations 1990(9);

“the 1979 Regulations” means for Scotland the Local Government (Compensation for Premature Retirement) (Scotland) Regulations 1979(10), the Local Government (Compensation for Premature Retirement) (Scotland) Regulations 1982(11), the Local Government (Compensation for Redundancy and Premature Retirement) (Scotland) Amendment Regulations 1984(12), the Local Government (Compensation for Premature Retirement) (Scotland) Amendment Regulations 1986(13), and the Local Government (Compensation for Premature Retirement) (Scotland) Amendment Regulations 1990(14);

“the work” means work which is functional work within the meaning of section 8 of the 1980 Act or work to which sections 7 and 8 of the 1988 Act apply by virtue of section 6 of the 1988 Act, and which is described, or is to be described, in an invitation to tender prepared by the local authority.

Periods for response to notice and invitation to tender

2.—(1) This regulation applies where neither the Public Works Contracts Regulations 1991(15) nor Council Directive 92/50/EEC relating to the co-ordination of procedures for the award of public service contracts(16) apply to the procedures relating to the invitation to tender for the work and the award of a contract for the performance of the work to any of the contractors.

(4) S.I.1982/1009.

(5) S.I. 1984/740.

(6) S.I. 1986/151.

(7) S.I. 1988/466.

(8) S.I. 1989/372.

(9) S.I. 1990/2380.

(10) S.I. 1979/785.

(11) S.I. 1982/917.

(12) S.I. 1984/846.

(13) S.I. 1986/409.

(14) S.I. 1990/125.

(15) S.I. 1991/2680.

(16) OJNo. L209, 24.7.92, p.1.

(2) The period which, by virtue of section 7(2)(d) of the 1988 Act, is required to be specified in a notice published for the purposes of subsection (1) of that section (period for giving notice of a wish to carry out work) shall be a period of not less than 37 days commencing on the date on which the notice is published.

(3) The invitation to tender for the work shall specify as the period within which contractors are allowed to respond to the invitation a period of not less than 40 days commencing on the date of the invitation.

Period elapsing before commencement of certain work

3. In a case where a notice has been published for the purposes of section 7(1) of the 1988 Act the period which is to elapse between the announcement of the decision as to who should carry out the work described in the notice and the beginning of the period during which that work is to be carried out shall be not less than 30 days, and not more than 120 days.

Preparation of bids

4.—(1) For the purposes of this regulation—

“the head of paid service” means the officer designated by the local authority in accordance with section 4(1) of the Local Government and Housing Act 1989(17), or, where no such officer has been designated, the chief executive or other officer who is responsible for the general management of the local authority;

“relevant operation” means any one of the following operations—

- (a) selecting any publication in which a notice is to be published in accordance with section 7(1) of the 1988 Act;
- (b) selecting the persons to be invited to tender for the work;
- (c) sending the tender documents to the persons selected to be invited to tender for the work;
- (d) calculating or estimating any prospective cost;
- (e) receiving, opening or evaluating the bid and the contractors' tenders for the work; or
- (f) deciding whether the work is to be carried out by one of the contractors or by the local authority through their direct service organisation.

(2) For the purposes of the conditions mentioned in section 9(2)(b) and section 9(2)(d) of the 1992 Act the conduct to which this regulation applies is to be regarded as conduct which has the effect of restricting, preventing or distorting competition or is likely to have that effect.

(3) This regulation applies to any conduct which consists of, or involves—

- (a) the undertaking of any work or responsibility with respect to a relevant operation, and, concurrently, the undertaking of any work or responsibility with respect to the preparation of the bid or any functions which the local authority perform through their direct service organisation, by any individual apart from—
 - (i) the head of paid service and, in his absence, the person authorised to act as his deputy;
 - (ii) the statutory or non-statutory chief officer who is directly accountable to the head of paid service for the discharge of the relevant operation, and, in the absence of that statutory or non-statutory chief officer, the deputy chief officer who is directly accountable to him;
 - (iii) any persons who are employed by the local authority to provide legal, financial or other professional advice in relation to the business of the local authority;

- (b) giving to the direct service organisation information about the work in addition to the information contained in the notice published under section 7(1) of the 1988 Act, without giving the same information to each of the persons who gave the local authority notice that he may wish to carry out the work;
- (c) giving to the direct service organisation information about the work in addition to the information contained in the tender documents, without giving the same information to each of the contractors.

Evaluation of bid and tenders

5. For the purposes of the conditions mentioned in section 9(2)(b) and section 9(2)(d) of the 1992 Act, the following conduct is to be regarded as conduct which has the effect of restricting, preventing or distorting competition or is likely to have that effect, namely—

- (a) conduct in the course of any evaluation made for the purpose of deciding who should undertake or carry out the work, which consists of, or involves—
 - (i) calculating the amount of any prospective cost after the opening of the bid and the contractors' tenders for the work;
 - (ii) giving to the direct service organisation an opportunity to explain or provide further information about the bid, without giving an equivalent opportunity to each of the contractors;
 - (iii) taking into account the matters mentioned in regulation 6 in a manner, or to an extent, other than as prescribed in these Regulations;
 - (iv) taking into account any costs, other than prospective costs, which the local authority would, or could, incur as a consequence of a decision to accept one of the contractors' tenders for the work;
- (b) announcing who is to undertake or carry out the work later than 90 days after the expiry of the period within which contractors are allowed to respond to the invitation to tender for the work;
- (c) doing anything which results, or is likely to result, in the contravention of regulation 3.

6. In the course of any evaluation made for the purpose of deciding who should undertake or carry out the work the local authority shall take into account in the manner prescribed in these Regulations—

- (a) the particulars of the bid referable to the amount which would be credited to the account of the direct service organisation for the performance of the work, and the particulars of each contractor's tender referable to the fees and expenses which would be payable to the contractor for the performance of the work;
- (b) where the local authority requires the contractor to provide particulars of a bond or guarantee in relation to the performance of the work, the cost quoted by each contractor or providing a bond or guarantee which meets the requirements of the invitation to tender for the work;
- (c) the present value of savings;
- (d) the total amount of allowable costs included by the local authority in the bid;
- (e) the total amount of prospective costs calculated or estimated by the local authority.

Qualifying tenders

7. Having regard to the bid and each contractor's tender for the work, the local authority shall—
- (a) calculate or estimate—

- (i) the amount, excluding the total amount of allowable costs, which the local authority would pay to the credit of the account of the direct service organisation, if it accepted the bid, and
- (ii) the total amount of fees and expenses which the local authority would be bound to pay to the contractor if it accepted his tender;
- (b) identify which, if any, of the contractors' tenders meet the following qualification, namely that the amount mentioned in sub-paragraph (a)(ii) is less than the value of the sum of—
 - (i) the amount mentioned in sub-paragraph (a)(i), and
 - (ii) the notional premium.

The present value of savings

- 8.—**(1) The Schedule shall have effect for the purpose of calculating the present value of savings.
- (2) In the course of evaluating each qualifying tender the local authority shall—
- (a) take into account the present value of savings;
 - (b) where the local authority decides to take into account any prospective costs, compare the present value of savings with the total amount of prospective costs.

Allowable costs of employing disabled persons

- 9.—**(1) For the purposes of this regulation—
- “disabled person” means any person who is a disabled person within the meaning of section 1 of the Disabled Persons (Employment) Act 1944(**18**);
- “relevant costs” means the costs which—
- (a) arise out of, or are attributable to, the employment of disabled persons which would not be incurred if such persons were not disabled persons, and
 - (b) would arise out of, or be attributable to, the performance of the work by disabled persons if the bid were successful.
- (2) The following amount shall be an allowable cost, namely the amount, if any, by which the relevant costs exceed the amount of any grant paid, or to be paid, to the local authority by the Department of Employment in aid of the employment of disabled persons, which, if the bid were successful, would be attributable to the employment of disabled persons in relation to the work.

Allowable costs of employing trainees

- 10.—**(1) For the purposes of this regulation—
- “grant aid” means the amount of any grant paid or to be paid to the local authority by the Department of Employment in aid of relevant arrangements, which, if the bid were successful, would be attributable to the employment of apprentices and trainees in relation to the work;
- “relevant costs” means the costs mentioned in paragraph (2);
- “relevant arrangements” means any arrangements within the meaning of paragraph (4);
- “trainees” means any persons employed under the terms of any relevant arrangements.
- (2) Relevant costs are the costs which, if the bid were successful, would arise out of, or be attributable to, the employment of trainees in relation to the work, with respect to—

- (a) the management of relevant arrangements, including advertising, recruiting trainees and apprentices, setting up projects and placing trainees and apprentices;
 - (b) the overheads of relevant arrangements, including the provision of premises and equipment for the purposes of the scheme, and all necessary outgoings including loan charges;
 - (c) the provision of instruction in accordance with the requirements and objectives of relevant arrangements, and the registration of trainees' and apprentices' qualifications;
 - (d) the provision of financial support of trainees in accordance with the requirements of relevant arrangements.
- (3) The following amounts shall be allowable costs, namely—
- (a) in the case of arrangements which are relevant arrangements by virtue of paragraphs (4)(a) and (b), the amount, if any, by which relevant costs exceed the amount of any grant aid, and
 - (b) in the case of arrangements which are relevant arrangements by virtue of paragraph (4)(c), the amount, if any, by which relevant costs exceed the value of the sum of—
 - (i) the amount of any grant aid, and
 - (ii) the costs which, if the bid were successful, would arise out of, or be attributable to, the employment in relation to the work of persons who are not trainees.
- (4) Relevant arrangements are—
- (a) arrangements made by the Secretary of State under section 2 of the Employment and Training Act 1973⁽¹⁹⁾;
 - (b) arrangements made by Scottish Enterprise or Highlands and Islands Enterprise under section 2 of the Enterprise and New Towns (Scotland) Act 1990⁽²⁰⁾;
 - (c) arrangements made by the local authority for the training of persons in their employment who are trainees or apprentices.

Prospective costs

11. For the purposes of the conditions mentioned in section 9(2)(b) and section 9(2)(d) of the 1992 Act, the following conduct is not to be regarded as conduct which has the effect of restricting, preventing or distorting competition or is likely to have that effect, namely conduct in the course of any evaluation made for the purpose of deciding who should undertake or carry out the work, which consists of, or involves, calculating or estimating prospective costs.

Redundancy costs

12.—(1) This regulation applies if, as a consequence of a decision by the local authority to accept one of the contractors' tenders for the work, the local authority would dismiss any person in its employment on the grounds of redundancy.

(2) For the purposes of this regulation—

“relevant staff” means the persons who would be dismissed as redundant by reason of the local authority’s acceptance of one of the contractors' tenders for the work;

“eligible staff” means those members, if any, of the relevant staff who would on dismissal be entitled to receive compensation under the 1982 Regulations, or, as the case may be, the 1979 Regulations;

(19) 1973 c. 50.

(20) 1990 c. 35.

“a qualifying local authority” means a local authority which has pursued a general policy of exercising its discretion to award compensation under the 1982 Regulations, or, as the case may be, the 1979 Regulations (the payment of additions to the superannuation benefits payable under the Local Government Superannuation Scheme), and would pay such compensation to the eligible staff.

- (3) The sum of the following amounts shall be a prospective cost—
- (a) the total redundancy payment which the local authority would become liable to pay to the relevant staff under Part VI of the Employment Protection (Consolidation) Act 1978(21), and,
 - (b) provided that the local authority is a qualifying local authority, an amount equal to the value of the product of—

$$15 \times S$$

where

S means the total compensation which would be payable to the eligible staff under the 1982 Regulations, or, as the case may be, the 1979 Regulations, during the year immediately following the date on which the eligible staff cease to hold their employment with the local authority.

Payments during period of notice of dismissal

- 13.—(1) For the purposes of this regulation—

“commencement date” means the date of commencement of the period during which the work is to be carried out;

“relevant staff” means any persons in the employment of the local authority who would be dismissed by the local authority on the grounds of redundancy if the local authority accepted one of the contractors' tenders for the work;

“the relevant date” means the date of expiry of a period of 12 weeks following the date on which the local authority accepts the successful contractor's tender.

- (2) This regulation applies if, and only if—
- (a) the relevant date falls after the commencement date, and
 - (b) at any time during the period between the commencement date and the relevant date the local authority would be likely to excuse any relevant staff from the performance of their duties under their contracts of employment.

(3) The following amount shall be a prospective cost, namely the amount of the gross wages and salaries which would be payable to the relevant staff for the whole of any period during which relevant staff are likely to be excused from the performance of their duties under their contracts of employment.

Costs of terminating contracts for hire and other contracts

14.—(1) This regulation applies if, as a consequence of a decision by the local authority to accept one of the contractors' tenders for the work, the local authority would terminate any contract entered into for the purposes of the direct service organisation for—

- (a) the lease or maintenance of any land or building;
- (b) the hire or maintenance of any plant, equipment or other things; or
- (c) the purchase of any goods.

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

(2) The following amount shall be a prospective cost, namely with respect to any contract to which this regulation applies any amount which would be payable by the local authority under the contract by reason of the early termination of the contract.

Issue of guidance

15.—(1) The Secretary of State shall issue guidance as to how conduct restricting, distorting or preventing competition is to be avoided in the doing of anything under or for the purposes of Part III of the 1980 Act or Part I of the 1988 Act.

(2) In any determination of whether or not the conditions mentioned in section 9(2)(b) and (d) of the 1992 Act have been fulfilled there shall be taken into account the extent of any contravention of the guidance issued under paragraph (1).

24th March 1993

Michael Howard
Secretary of State for the Environment

24th March 1993

Allan Stewart
Parliamentary Under Secretary of State Scottish
Office

24th March 1993

David Hunt
Secretary of State for Wales

SCHEDULE

Regulation 8

THE PRESENT VALUE OF SAVINGS

1. For the purposes of this Schedule—

“apportioned notional premium” means the amount equal to the value of the product of—

$$12y \frac{NP}{M}$$

where—

NP means the notional premium;

M means the total number of months in the contract period;

“credit” means for any year of the contract the amount mentioned in paragraph (2)(a);

“fee” means for any year of the contract the amount mentioned in paragraph 2(b);

“saving” means the amount mentioned in paragraph 2(c)(i), adjusted in accordance with paragraph 3 for each year of the contract other than the first;

“difference” means the amount mentioned in paragraph 2(c)(ii), adjusted in accordance with paragraph 3 for each year of the contract other than the first;

“contract period” means the period during which the work is to be carried out;

“month” includes any month which is incomplete at the date when the contract period expires;

“year” includes any year which is incomplete at the date when the contract period expires.

2. Having regard to the particulars of the bid and each qualifying tender, the local authority shall calculate or estimate for each year of the contract—

(a) the amount, excluding the amount of any allowable costs, which the local authority would pay to the credit of the account of the direct service organisation, if it accepted the bid, and

(b) the amount of fees and expenses which the local authority would be bound to pay to the contractor if it accepted his qualifying tender for the work;

(c) (i) the amount by which the value of the sum of the credit and the apportioned notional premium exceeds the fee,

or, as the case may be,

(ii) the amount by which the fee exceeds the value of the sum of the credit and the apportioned notional premium.

3.—(1) For each year of the contract other than the first, the local authority shall adjust, as the case may be, the amount mentioned in paragraph 2(c)(i) or the amount mentioned in paragraph 2(c)(ii) in accordance with the following provisions.

(2) In the second year of the contract the adjustment shall be calculated by dividing the said amount by the figure produced in accordance with the formula—

$$1 + \frac{i}{100}$$

(3) In each subsequent year of the contract the adjustment shall be calculated by dividing the said amount by the figure produced in accordance with the formula—

$$\left(1 + \frac{i}{100} \right)$$

where

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

n is 2 in the third year of the contract, 3 in the fourth year and increases by 1 in each subsequent year.

(4) For the purposes of these provisions i means the figure in Table 2 of Economic Trends published by the Central Statistical Office as the most recent percentage change, quarter on corresponding quarter of previous year of the implied gross domestic product deflator at factor cost.

4. For each qualifying tender the local authority shall calculate the present value of savings by means of the formula—

$$\frac{12yFyA}{M}$$

where—

A means the amount by which the value of the sum of the savings exceeds the value of the sum of the differences;

M means the total number of months in the contract period;

F means the value in the second column of the Table corresponding with that rate in the first column of the Table which represents the current general discount rate prescribed by HM Treasury for the purpose of comparing public expenditure—

Table

| Column 1 | Column 2 |
|----------|----------|
| 1% | 9.56602 |
| 2% | 9.16224 |
| 3% | 8.78611 |
| 4% | 8.43533 |
| 5% | 8.10782 |
| 6% | 7.80169 |
| 7% | 7.51523 |
| 8% | 7.24689 |
| 9% | 6.99525 |
| 10% | 6.75902 |

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about the conduct of competitive tendering for the carrying out of certain work by a local authority.

Regulation 2 prescribes time limits with respect to the tendering procedure for work which does not fall within the operation of the Public Works Contracts Regulations 1991 or Council Directive

92/50/EEC, namely the time to be allowed for notifying an authority of a wish to tender for work described in a notice published for the purposes of section 7(1) of the Local Government Act 1988, and for responding to an invitation to tender for any work.

Regulation 3 prescribes the maximum and minimum period which may elapse between announcing who should carry out work described in a notice published for the purposes of section 7(1) of the Local Government Act 1988 and the commencement of that work.

Regulations 4 and 5 prescribe with respect to steps in the tendering procedure (including the preparation and evaluation of an authority's own bid for the work, and announcing who should carry out the work) conduct which is to be regarded as having the effect, or likely effect, of restricting, preventing or distorting competition.

Regulations 6 to 14 prescribe matters which an authority is required to take into account in the course of evaluating tenders and its own bid for the work, and prescribe the manner of taking such matters into account.

Regulations 6, 7 and 8 and the Schedule make provision for taking into account certain costs and other amounts, namely the amount which would be credited to the account of the direct service organisation if the authority carried out the work; the amount which would be payable to each tenderer for the performance of the work; costs quoted by tenderers of providing a bond or guarantee relating to the performance of the work; and any costs calculated or estimated under regulations 9 and 10 and 12 to 14.

Regulations 9 and 10 make provision for the calculation or estimation of certain costs which the authority would, or would be likely, to incur if it carried out the work.

Regulations 12 to 14 make provision for the calculation or estimation of certain costs which the authority would, or would be likely, to incur as a consequence of accepting one of the tenders.

Regulation 15 makes provision for the issue of guidance as to how conduct restricting, distorting or preventing competition is to be avoided, and requires the extent of any contravention of the guidance to be taken into account in determining whether or not an authority has fulfilled the conditions for competition which apply in the case of any work.