

2009 No. 3244

PUBLIC PASSENGER TRANSPORT, ENGLAND

**The Quality Contracts Schemes (Tendering Requirements)
(England) Regulations 2009**

<i>Made</i> - - - -	<i>7th December 2009</i>
<i>Laid before Parliament</i>	<i>14th December 2009</i>
<i>Coming into force</i> - -	<i>11th January 2010</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 130(8), 131(2) to (5), 134(1)(a) and (2) and 160(1) of the Transport Act 2000(a).

Citation, commencement and application

1.—(1) These Regulations may be cited as the Quality Contracts Schemes (Tendering Requirements) (England) Regulations 2009 and come into force on 11th January 2010.

(2) These Regulations apply as respects schemes which relate to areas in England only(b).

Interpretation

2. In these Regulations—

“the Act” means the Transport Act 2000;

“the 1985 Act” means the Transport Act 1985(c);

“authority” means a local transport authority(d) in England or, where that authority is an Integrated Transport Authority, it means the Passenger Transport Executive for the relevant integrated transport area(e); and

-
- (a) 2000 c. 38. Section 134 was amended by section 42 of the Local Transport Act 2008 (c. 26).
- (b) The power to make Regulations under the sections of the Transport Act 2000 cited in the preamble rests with the “appropriate national authority”, as defined in section 162(1) of that Act. The power to make Regulations as respects Wales rests, therefore, with the Welsh Ministers.
- (c) 1985 c. 67.
- (d) By virtue of section 162(1) of the Transport Act 2000, the term “local transport authority” has the meaning given in section 108(4) of that Act. Section 108(4)(c) was substituted by the Local Transport Act 2008, section 77(5) and Schedule 4, Part 3, paragraphs 41 and 42.
- (e) Section 9 of the Transport Act 1968 (c. 73) provides for the establishment of integrated transport areas, Integrated Transport Authorities and Passenger Transport Executives. This section was amended by the Transport Act 1985, sections 57(1) and (6), 58(1) and (2), and section 139(3) and Schedule 3, paragraph 3 and Schedule 8. It was also amended by the Local Transport Act 2008, sections 77(5), 98(4) and 131; Schedule 4, Part 1, paragraphs 1 and 2, and Schedule 7, Part 4. There are other amendments but none is relevant. Section 162(4) of the Transport Act 2000 provides that where certain references in that Act to an authority are to an Integrated Transport Authority, they are to be construed as references to the Passenger Transport Executive for the integrated transport area. This provision was amended by the Local Transport Act 2008, sections 15(6), 26(9), 27(2), 40(2), 77(5) and 131; Schedule 4, Part 3, paragraphs 41 and 46, and Schedule 7, Part 2.

“scheme” means a quality contracts scheme(a).

Agreements to which section 89(1) of the 1985 Act does not apply

3.—(1) Section 89(1) of the 1985 Act(b) (obligation to invite tenders for subsidised services) does not apply to an agreement providing for service subsidies made by an authority in the circumstances described in paragraph (2).

(2) The circumstances are that—

- (a) a scheme has been made, under which local services(c) the same as or similar to those specified in an agreement providing for service subsidies would, on the coming into force of the relevant part of the scheme, be required to be provided under a quality contract;
- (b) a local service provided under an agreement described in sub-paragraph (a) is due, in accordance with the terms of the agreement, to cease to operate no more than twelve months before the coming into force of the relevant quality contract;
- (c) the authority is of the opinion that it is necessary to enter into a further agreement providing for service subsidies in order to secure the provision of a local service to replace the service described in sub-paragraph (b);
- (d) section 89(1) of the 1985 Act would, but for this regulation, apply to the agreement providing for service subsidies described in sub-paragraph (c); and
- (e) the authority is of the opinion that, in the particular circumstances of the case, making an agreement providing for service subsidies without satisfying the requirement specified in section 89(1) of the 1985 Act is the most economic, efficient and effective way to secure the service to be provided under the agreement.

(3) For the purposes of this regulation an agreement providing for service subsidies is an agreement under which a person undertakes to provide a local service on terms which include provision for the making of payments to that person by the authority.

Agreements to which section 91(3) and (4) of the 1985 Act does not apply

4.—(1) Section 91(3) (duty to invite tenders following making of emergency service subsidy agreement) and section 91(4) of the 1985 Act (limit on duration of emergency service subsidy agreement) do not apply to an emergency service subsidy agreement made by an authority in the circumstances described in paragraph (2).

(2) The circumstances are that—

- (a) a scheme has been made, under which local services the same as or similar to those specified in the emergency service subsidy agreement would, on the coming into force of the relevant part of the scheme, be required to be provided under a quality contract;
- (b) the scheme or (in the case of a scheme which provides for different provisions to come into operation on different dates) the provision of the scheme which would require the services described in sub-paragraph (a) to be provided under a quality contract is due to come into force not later than twelve months after the date on which services are first provided under the emergency service subsidy agreement; and
- (c) the authority is of the opinion that, in the particular circumstances of the case, making an emergency service subsidy agreement without satisfying the requirements specified in section 91(3) and (4) of the 1985 Act is the most economic, efficient and effective way to secure the services to be provided under that agreement.

(a) By virtue of section 162(1) of the Transport Act 2000, the term “quality contracts scheme” is to be construed in accordance with section 124(3) of that Act. This definition was amended by section 19(1) and (4) of the Local Transport Act 2008.

(b) Section 89(1) of the Transport Act 1985 prohibits an authority from making a subsidised service agreement for the provision of local services other than by accepting a tender invited under that section.

(c) By virtue of section 162(3) of the Transport Act 2000, the term “local service” has the meaning given in section 2 of the Transport Act 1985.

(3) For the purposes of this regulation “emergency service subsidy agreement” means an agreement under which a person undertakes to provide a local service on terms which include provision for the making of payments to that person by the authority and to which, by virtue of section 91(2) of the 1985 Act (exceptions from section 89(1)), section 89(1) of that Act does not apply^(a).

Further exception from requirement to tender for quality contracts

5.—(1) Section 130 of the Act does not apply in any case where the authority or authorities have issued invitations to tender in accordance with section 130 of the Act^(b) (tendering for quality contracts) and either no tender, or no acceptable tender, is submitted in response to the invitation.

(2) The maximum duration of a quality contract entered into in the circumstances described in paragraph (1) is two years, commencing with the day on which services are first provided under the quality contract.

Quality contracts entered into without inviting tenders

6.—(1) If an authority or authorities enter into a quality contract without inviting tenders under section 130 of the Act, in the circumstances described in section 131(1) of the Act, the authority or authorities must invite tenders in accordance with section 130 of the Act for the provision of the services to which the quality contract relates as soon as reasonably practicable after the contract is entered into.

(2) The maximum duration of a quality contract entered into without inviting tenders under section 130 of the Act, in the circumstances described in section 131(1) of the Act (exceptions from section 130), is twelve months commencing with the day on which services are first provided under the quality contract.

Publication of information about tenders and quality contracts

7.—(1) If an authority or authorities enter into a quality contract by accepting a tender invited in accordance with section 130 of the Act the authority or authorities must publish, in the manner prescribed in regulation 8, the information specified in Part 1 of the Schedule.

(2) If an authority or authorities enter into a quality contract without inviting tenders in accordance with section 130 of the Act in the circumstances described in section 131(1) of the Act the authority or authorities must publish, in the manner prescribed in regulation 8, the information specified in Part 2 of the Schedule.

(3) If an authority or authorities enter into a quality contract without accepting a tender invited in accordance with section 130 of the Act in the circumstances described in regulation 5 the authority or authorities must publish, in the manner prescribed in regulation 8, the information specified in paragraph (4) or, as the case may be, paragraph (5).

(4) Where no tender was submitted, the information is—

- (a) a statement that no tender was submitted; and
- (b) the information specified in Part 2 of the Schedule.

(5) Where no acceptable tender was submitted, the information is—

- (a) the information specified in Parts 2 and 3 of the Schedule; and
- (b) a statement of the reasons why the authority or authorities considered the tenders submitted to be unacceptable.

(a) Section 91(2) of the Transport Act 1985 provides that the prohibition on an authority from making a subsidised service agreement for the provision of local services other than by accepting a tender invited under section 89(1) of that Act does not apply in certain circumstances where action is needed urgently so as to maintain existing services, replace services which have ceased to be provided, or to provide services to meet unexpected public transport requirements.

(b) Section 130 of the Transport Act 2000 was amended by section 30 of the Local Transport Act 2008.

(6) If an authority or authorities, having issued invitations to tender in accordance with section 130 of the Act, do not enter into a quality contract the authority or authorities must publish, in the manner prescribed in regulation 8, the information specified in paragraph (7) or, as the case may be, paragraph (8).

(7) Where no tender was submitted, the information is a statement of that fact.

(8) Where no acceptable tender was submitted, the information is—

- (a) the information specified in Part 3 of the Schedule; and
- (b) a statement of the reasons why the authority or authorities considered the tenders submitted to be unacceptable.

Manner of publication of information

8. In fulfilling the obligations prescribed in regulation 7 the authority or authorities must—

- (a) publish the information in such manner as appears to the authority or authorities to be convenient to operators of local services and other interested parties; and
- (b) give notice in at least one newspaper circulating in the area or areas to which the scheme relates of the availability of the information and where or how it may be inspected or obtained.

European procurement regulations

9. Nothing in these Regulations affects any obligations arising under or pursuant to the Public Contracts Regulations 2006(a) or the Utilities Contracts Regulations 2006(b).

Signed by authority of the Secretary of State

7th December 2009

Sadiq Khan
Minister of State
Department for Transport

-
- (a) S.I. 2006/5 implementing Directive 2004/18/EC of the European Parliament and Council of 31st March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public services contracts (OJ No. L 134, 30.4.2004, p 114).
 - (b) S.I. 2006/6 implementing Directive 2004/17/EC of the European Parliament and Council of 31st March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ No. L 134, 30.4.2004 p1).

PART 1

INFORMATION TO BE PUBLISHED BY AUTHORITY ENTERING INTO
QUALITY CONTRACT BY ACCEPTING A TENDER

- 1.—(1) The name of the successful tenderer as it appears on—
- (a) any PSV operator's licence^(a) held by the successful tenderer; or
 - (b) any permit granted to the successful tenderer under section 22 of the 1985 Act (community bus permits).
- (2) Where different from the information specified by virtue of sub-paragraph (1), the name under which the successful tenderer trades.
- 2.—(1) The amount of the successful tender.
- (2) Where applicable, the aggregate amount of payments to be made by the authority or, as the case may be, the successful tenderer during the period of twelve months commencing with the date on which services are first provided under the quality contract.
3. The number of tenders received by the authority in response to the invitation issued in accordance with section 130 of the Act.
- 4.—(1) The amounts of the highest and lowest tenders received.
- (2) The aggregate amount of payments which would have been payable by the authority or, as the case may be, the tenderer during the period of twelve months commencing with the date on which services would have first been provided under the quality contract had the highest or the lowest tenders been accepted.
- (3) Where tenders were invited on more than one basis, a summary of each basis on which tenders were invited and—
- (a) where more than one tender was received on any such basis, the amounts (expressed in the manner described in sub-paragraph (2)) of the highest and lowest tenders; or
 - (b) where only one tender was received on any such basis, the amount (expressed in the manner described in sub-paragraph (2)) of that tender.
- (4) An authority is not required to publish information under this paragraph if the same information is also required to be published under paragraph 2 of this Part.
5. For the purposes of paragraphs 2(2) and 4(2) the aggregate amount of payments includes provision for the payment of any specific amount dependent on a contingency.

PART 2

INFORMATION TO BE PUBLISHED BY AUTHORITY ENTERING INTO
QUALITY CONTRACT WHERE EXCEPTION FROM SECTION 130 OF THE
ACT APPLIES

- 6.—(1) The name of the person with whom the quality contract has been entered into as it appears on—

(a) By virtue of section 162(2) of the Transport Act 2000, the term 'PSV operator's licence' means a PSV operator's licence granted under Part 2 of the Public Passenger Vehicles Act 1981.

- (a) any PSV operator's licence held by the person; or
- (b) any permit granted to the person under section 22 of the 1985 Act.

(2) Where different from the information specified by virtue of sub-paragraph (1), the name under which the person trades.

7.—(1) The amount of the quality contract.

(2) Where applicable, the aggregate amount of payments (including provision for the payment of any specific amount dependent on a contingency) to be made by the authority or, as the case may be, the person with whom the quality contract has been entered into during the period of twelve months commencing with the date on which services are first provided under the quality contract.

PART 3

INFORMATION TO BE PUBLISHED BY AUTHORITY ACCEPTING NONE OF THE TENDERS SUBMITTED

8. The number of tenders received.

9.—(1) The amount of the tender (if only one) or amounts (if more than one) of the highest and lowest tenders received.

(2) The aggregate amount of payments (including where appropriate the payment of any specific amount dependent on a contingency) which would have been payable by the authority or, as the case may be, the tenderer during the period of 12 months commencing with the date on which services would have first been provided under the quality contract had the tender or, as the case may be, the highest or the lowest tenders, been accepted.

(3) Where tenders were invited on more than one basis, a summary of each basis on which tenders were invited and—

- (a) where more than one tender was received on any such basis, the amounts (expressed in the manner described in sub-paragraph (2)) of the highest and lowest tenders; or
- (b) where only one tender was received on any such basis, the amount (expressed in the manner described in sub-paragraph (2)) of that tender.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under Part 2 of the Transport Act 2000 (“the Act”) and apply to local transport authorities and Passenger Transport Executives responsible for the making of quality contracts under a quality contracts scheme.

A quality contracts scheme (“scheme”) is a scheme under which a local transport authority determines the local bus network in the area to which the scheme relates. Where such a scheme is in place, local bus services can only (with some exceptions) be provided under quality contracts. A quality contract is a contract made by the authority under which a particular operator is granted the exclusive right to operate specified bus services. Other than in emergency and other prescribed circumstances, such contracts may only be awarded following a competitive tender process.

These Regulations prescribe certain exceptions from the competitive tendering requirements, and impose certain obligations on authorities making quality contracts.

Regulation 3 provides that section 89(1) of the Transport Act 1985 (obligation to invite tenders for subsidised services) does not apply in certain circumstances. The circumstances are where a local service is due to cease to be provided, in accordance with the terms of an agreement providing for service subsidies, in the twelve months before those services would, under a scheme which has already been made, fall to be provided under a quality contract.

Regulation 4 prescribes circumstances in which section 91(3) and (4) of the Transport Act 1985 (duty to invite tenders and limit on duration of contract) does not apply. The circumstances are where an authority enters into an emergency subsidised service agreement for the provision of local services in the twelve months before those services would, under a scheme which has already been made, fall to be provided under a quality contract. The effects are to disapply the normal requirement to invite tenders and lift the limit on the duration of the emergency contract.

Regulation 5 enables an authority, where invitations to tender have been issued under section 130 of the Act (tendering for quality contracts) but either no tenders, or no acceptable tenders, have been submitted, to enter into a quality contract without the need to issue further invitations to tender. This regulation prescribes that the maximum duration of such a quality contract is two years.

Regulation 6 provides that the maximum duration of a quality contract made under section 131(1) of the Act (exceptions from the requirement to tender for quality contracts) is twelve months.

Regulation 7 requires authorities to publish certain information, including that specified in the *Schedule*, in prescribed circumstances.

Regulation 8 prescribes how information required to be published under regulation 7 is to be made available to operators of local services and other interested persons. The authority must give notice of the publication in a newspaper so as to inform people where or how it may be inspected or obtained.

Regulation 9 stipulates that provisions in these Regulations do not affect obligations arising from the European Procurement Directives.

An impact assessment has been prepared and copies can be obtained from the Department for Transport, Great Minster House, 76 Marsham Street, London, SW1P 4DR. The assessment is annexed to the Explanatory Memorandum which can be found alongside these Regulations on the Office of Public Sector Information website (www.opsi.gov.uk).

STATUTORY INSTRUMENTS

2009 No. 3244

PUBLIC PASSENGER TRANSPORT, ENGLAND

The Quality Contracts Schemes (Tendering Requirements)
(England) Regulations 2009

£5.50