

Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (Text with EEA relevance)

TITLE III

PARTICULAR PROCUREMENT REGIMES

CHAPTER I

Social and other specific services

Article 91

Award of contracts for social and other specific services

Contracts for social and other specific services, listed in Annex XVII shall be awarded in accordance with this Chapter where the value of the contracts is equal to or greater than the threshold indicated in point (c) Article 15.

Article 92

Publication of notices

1 Contracting entities intending to award a contract for the services referred to in Article 91 shall make known their intention by any of the following means:

- a by means of a contract notice; or
- b by means of a periodic indicative notice, which shall be published continuously. The periodic indicative notice shall refer specifically to the types of services that will be the subject of the contracts to be awarded. It shall indicate that the contracts will be awarded without further publication and invite interested economic operators to express their interest in writing; or
- c by means of a notice on the existence of a qualification system, which shall be published continuously.

The first subparagraph shall, however, not apply where a negotiated procedure without prior call for competition could have been used in conformity with Article 50 for the award of a service contract.

2 Contracting entities that have awarded a contract for the services referred to in Article 91 shall make known the results by means of contract award notice. They may, however, group such notices on a quarterly basis. In that case, they shall send the grouped notices within 30 days of the end of each quarter.

3 The notices referred to in paragraphs 1 and 2 of this Article shall contain the information referred to in Annex XVIII, respectively in parts A, B, C or D, in accordance with the standard model notices. The Commission shall establish the standard forms by means of implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 105.

4 The notices referred to in this Article shall be published in accordance with Article 71.

Article 93

Principles of awarding contracts

1 Member States shall put in place national rules for the award of contracts subject to this Chapter, in order to ensure contracting entities comply with the principles of transparency and equal treatment of economic operators. Member States are free to determine the procedural rules applicable as long as such rules allow contracting entities to take into account the specificities of the services in question.

2 Member States shall ensure that contracting entities may take into account the need to ensure quality, continuity, accessibility, affordability, availability and comprehensiveness of the services, the specific needs of different categories of users, including disadvantaged and vulnerable groups, the involvement and empowerment of users and innovation. Member States may also provide that the choice of the service provider shall be made on the basis of the tender presenting the best price-quality ratio, taking into account quality and sustainability criteria for social services.

Article 94

Reserved contracts for certain services

1 Member States may provide that contracting entities which are contracting authorities may reserve the right for organisations to participate in procedures for the award of public contracts exclusively for those health, social and cultural services referred to in Article 91, which are covered by CPV codes 75121000-0, 75122000-7, 75123000-4, 79622000-0, 79624000-4, 79625000-1, 80110000-8, 80300000-7, 80420000-4, 80430000-7, 80511000-9, 80520000-5, 80590000-6, from 85000000-9 to 85323000-9, 92500000-6, 92600000-7, 98133000-4, 98133110-8.

2 An organisation referred to in paragraph 1 shall fulfil all of the following conditions:

- a its objective is the pursuit of a public service mission linked to the delivery of the services referred to in paragraph 1;
- b profits are reinvested with a view to achieving the organisation's objective. Where profits are distributed or redistributed, this should be based on participatory considerations;
- c the structures of management or ownership of the organisation performing the contract are based on employee ownership or participatory principles, or require the active participation of employees, users or stakeholders; and
- d the organisation has not been awarded a contract for the services concerned by the contracting authority concerned pursuant to this Article within the past three years.

3 The maximum duration of the contract shall not be longer than three years.

4 The call for competition shall make reference to this Article.

5 Notwithstanding Article 108, the Commission shall assess the effects of this Article and report to the European Parliament and the Council by 18 April 2019.

CHAPTER II

Rules governing design contests

Article 95

Scope

1 This Chapter shall apply to design contests organised as part of a procurement procedure for a service contract, provided that the estimated value of the contract, net of VAT, and including any possible prizes or payments to participants, is equal to or greater than the amount set out in point (a) of Article 15.

2 This Chapter shall apply to all design contests where the total amount of contest prizes and payments to participants, including the estimated value net of VAT of the service contract which might subsequently be concluded under point (j) of Article 50 if the contracting entity does not exclude such an award in the contest notice, is equal to or greater than the amount set out in point (a) of Article 15.

Article 96

Notices

1 Contracting entities that intend to organise a design contest shall call for competition by means of a contest notice.

Where they intend to award a subsequent service contract pursuant to point (j) of Article 50, this shall be indicated in the design contest notice.

Contracting entities that have held a design contest shall make the results known by means of a notice.

2 The call for competition shall include the information set out in Annex XIX and the notice of the results of a design contest shall include the information set out in Annex XX in the format of standard forms. The Commission shall establish those standard forms by means of implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 105.

The notice of the results of a design contest shall be forwarded to the Publication Office of the European Union within 30 days of the closure of the design contest.

Where the release of information on the outcome of the contest would impede law enforcement, would be contrary to the public interest or would prejudice the legitimate commercial interests of a particular economic operator, whether public or private, or might prejudice fair competition between economic operators, such information may be withheld from publication.

3 Article 71(2) to (6) shall also apply to notices relating to design contests.

Article 97

Rules on the organisation of design contests, the selection of participants and the jury

- 1 When organising design contests, contracting entities shall apply procedures which are adapted to Title I and this Chapter.
- 2 The admission of participants to design contests shall not be limited:
 - a by reference to the territory or part of the territory of a Member State;
 - b on the grounds that, under the law of the Member State in which the contest is organised, they would be required to be either natural or legal persons.
- 3 Where design contests are restricted to a limited number of participants, contracting entities shall establish clear and non-discriminatory selection criteria. In any event, the number of candidates invited to participate shall be sufficient to ensure genuine competition.
- 4 The jury shall be composed exclusively of natural persons who are independent of participants in the contest. Where a particular professional qualification is required of participants in a contest, at least a third of the jury members shall have that qualification or an equivalent qualification.

Article 98

Decisions of the jury

- 1 The jury shall be autonomous in its decisions or opinions.
- 2 The jury shall examine the plans and projects submitted by the candidates anonymously and solely on the basis of the criteria indicated in the contest notice.
- 3 The jury shall record its ranking of projects in a report, signed by its members, made according to the merits of each project, together with its remarks and any points that may need clarification.
- 4 Anonymity shall be observed until the jury has reached its opinion or decision.
- 5 Candidates may be invited, if need be, to answer questions that the jury has recorded in the minutes to clarify any aspects of the projects.
- 6 Complete minutes shall be drawn up of the dialogue between jury members and candidates.