Award of contracts for social and other specific services

74. Public contracts for social and other specific services listed in Schedule 3 shall be awarded in accordance with this Section.

Publication of notices

75.—(1) Contracting authorities intending to award a public contract for the services referred to in regulation 74 shall make known their intention by any of the following means:—

(a) by means of a contract notice, which shall contain the information referred to in part H of Annex V to the Public Contracts Directive; or

(b) by means of a prior information notice, which shall—

(i) be published continuously,

(ii) contain the information set out in part I of Annex V to the Public Contracts Directive,

(iii) refer specifically to the types of services that will be the subject-matter of the contracts to be awarded, and

(iv) indicate that the contracts will be awarded without further publication and invite interested economic operators to express their interest in writing.

(2) Paragraph (1) shall not apply where a negotiated procedure without prior publication could have been used, in accordance with regulation 32, for the award of a public service contract.

(3) Contracting authorities that have awarded a public contract for the services referred to in regulation 74 shall make known the results of the procurement procedure by means of a contract award notice, which shall contain the information referred to in part J of Annex V to the Public Contracts Directive.

(4) Contracting authorities may group contract award notices on a quarterly basis, in which case they shall comply with paragraph (5) by sending the grouped notices within 30 days of the end of each quarter.
(5) Contracting authorities shall send the notices referred to in this regulation for publication in accordance with regulation 51.

**Principles of awarding contracts**

76.—(1) Contracting authorities shall determine the procedures that are to be applied in connection with the award of contracts subject to this Section, and may take into account the specificities of the services in question.

(2) Those procedures shall be at least sufficient to ensure compliance with the principles of transparency and equal treatment of economic operators.

(3) In particular, where, in accordance with regulation 75, a contract notice or prior information notice has been published in relation to a given procurement, the contracting authority shall, except in the circumstances mentioned in paragraph (4), conduct the procurement, and award any resulting contract, in conformity with the information contained in the notice about—

(a) conditions for participation,

(b) time limits for contacting the contracting authority, and

(c) the award procedure to be applied.

(4) The contracting authority may, however, conduct the procurement, and award any resulting contract, in a way which is not in conformity with that information, but only if all the following conditions are met:—

(a) the failure to conform does not, in the particular circumstances, amount to a breach of the principles of transparency and equal treatment of economic operators;

(b) the contracting authority has, before proceeding in reliance on sub-paragraph (a)—

(i) given due consideration to the matter,

(ii) concluded that sub-paragraph (a) is applicable,

(iii) documented that conclusion and the reasons for it in accordance with regulation 84(7) and (8), and

(iv) informed the participants of the respects in which the contracting authority intends to proceed in a way which is not in conformity with the information contained in the notice.

(5) In paragraph (4)(b)(iv), “participants” means any economic operators which have responded to the notice and have not been informed by the contracting authority that they are no longer under consideration for the award of a contract within the scope of the procurement concerned.

(6) All time limits imposed on economic operators for the purposes of this regulation, whether for responding to a contract notice or taking any other steps in the relevant procedure, shall be reasonable and proportionate.

(7) Without prejudice to the generality of paragraph (1), and subject to the other requirements of this Chapter, contracting authorities may apply procedures for the purposes of this regulation which correspond (with or without variations) to procedures, techniques or other features provided for in Chapter 2, as well as procedures which do not.

(8) In relation to the award of contracts subject to this Section, contracting authorities may take into account any relevant considerations, including—

(a) the need to ensure quality, continuity, accessibility, affordability, availability and comprehensiveness of the services;

(b) the specific needs of different categories of users, including disadvantaged and vulnerable groups;

(c) the involvement and empowerment of users; and
(d) innovation.

**Reserved contracts for certain services**

77.—(1) Contracting authorities may reserve to qualifying organisations the right to participate in procedures for the award of reservable public contracts.

(2) For that purpose, a contract is a reservable public contract only if it is exclusively for one or more of the services 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, and 98133110-8.

(3) In this regulation, “qualifying organisation” means an organisation which fulfils all of the following conditions:—

(a) its objective is the pursuit of a public service mission linked to the delivery of services referred to in paragraph (2);

(b) profits are reinvested with a view to achieving the organisation’s objective, and any distribution of profits is based on participatory considerations;

(c) the structures of management or ownership of the organisation are (or will be, if and when it performs the contract) —

(i) based on employee ownership or participatory principles, or

(ii) require the active participation of employees, users or stakeholders; and

(d) the organisation has not been awarded, pursuant to this regulation, a contract for the services concerned by the contracting authority concerned within the past 3 years.

(4) The maximum duration of a contract awarded under this regulation shall not be longer than 3 years.

(5) Where a contracting authority exercises the power of reservation conferred by paragraph (1), the call for competition shall make reference to Article 77 of the Public Contracts Directive.

(6) This regulation does not apply in relation to the procurement of health care services for the purposes of the NHS within the meaning and scope of the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013(1).

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(1) S.I. 2013/500.