

The Act on System of Choice in the Public Sector



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The Act on System of Choice in the Public Sector (2008:962)

(Only the Swedish version is authentic)

Chapter 1 Area of application of the Act

Scope of the Act

Article 1

This Act applies when a contracting authority decides to apply a system of choice regarding services within health and social services, which are included as B Services in Category 25 of Appendix 3 of the Public Procurement Act (2007:1091). However, the Act does not apply to services covered by CPV code 85311300-5 (welfare services for children and young people) according to Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV).

‘System of choice’ according to this Act means a procedure where the individual is entitled to choose the supplier to perform the service and with which a contracting authority has approved and concluded a contract. The contracting authority does not need to apply the same system of choice within all areas affected.

Principles for system of choice

Article 2

The contracting authority shall treat suppliers in an equal and non-discriminatory manner. The contracting authority must observe the principles of transparency, mutual recognition and proportionality when applying a system of choice.

Application of the Administrative Procedure Act

Article 3

The Administrative Procedure Act (1986:223) shall not be applied to the processing of matters under this Act.

Chapter 2 Definitions

Article 1

'Contract documents/specification' means such documentation for the application to participate in a system of choice that a contracting authority provides.

Article 2

'Contract' means a written agreement with financial conditions that

1. has been concluded between one or more contracting authorities and one or more suppliers,
2. relates to the provision of services, and
3. has been signed by the parties or signed by them with an electronic signature.

The contract may also contain conditions other than financial conditions.

Article 3

'Supplier' means a person who provides service in the market as referred to in Chapter 1, Section 1, first paragraph. 'Supplier' also means a group of suppliers.

Article 4

'Continuous publication' means a notice that applies indefinitely and where no final date has been stipulated to submit an application.

Article 5

'Body governed by public law' means such companies and foundations that fulfil needs in the public interest, provided the need is not of a commercial nature, and:

1. which is for the greatest part funded by a municipality, a county council or a contracting authority,
2. whose operations are subject to the control of a municipality, a county council or a contracting authority, or
3. on whose board or corresponding management body more than half of the number of members are appointed by a municipality, a county council or a contracting authority.

Article 6

'Service' means such service as referred to in Chapter 1, Section 1, first paragraph.

Article 7

'Contracting authority' means a local government authority.

When applying this Act, the contracting authority shall be equated with

1. the decision-making assemblies of municipalities and county councils,
2. a body governed by public law as referred to in Section 5,
3. associations formed by one or more authorities according to the first paragraph or assemblies according to 1, and
4. associations of one or more bodies according to 2.

Chapter 3 Publication

Obligation to publish on a national website

Article 1

A contracting authority that has decided to establish or change a system of choice shall publish this on the national website set up for the purpose. Contract documents shall, together with the notice, be held available on the website.

Continuous publication

Article 2

The contracting authority shall continuously request applications by notices on the national website.

Chapter 4 Content of the contract documents

Financial remuneration

Article 1

The principles for the financial remuneration for a supplier shall be stated in the contract documents.

Special conditions of contract

Article 2

The contracting authority may lay down special social, environmental and other conditions relating to the performance of a contract. All conditions shall be stated in the notice about the system of choice or in the contract documents.

Submission and processing period of an application

Article 3

The manner in which the application is to be submitted shall be stated in the notice or the contract documents.

Article 4

The time within which the contracting authority will make a decision on approval shall be stated in the contract documents.

Section 5 The provisions of Section 10 of the Administrative Procedure Act (1986:223) shall apply when assessing whether a document is deemed to have been received by the contracting authority.

Chapter 5 Application for participation in a system of choice

The right to participate in a system of choice

Article 1

Natural or legal persons can individually or together with other suppliers submit an application. The contracting authority may not impose conditions requiring that a group shall assume a specific legal form in order to be allowed to submit an application. However, the contracting authority may request that a group shall assume a specific legal form when it has been awarded the contract, to the extent that this is necessary for the acceptable performance of the contract.

Access to the capacity of other undertakings

Article 2

An applicant may, where appropriate, rely on the economic, technical and professional ability of other undertakings in its application. The applicant shall, by producing a commitment by the undertakings in question or in another way prove that he or she will have at their disposal the resources necessary for the execution of the contract.

Chapter 6 Communication

Communication by electronic means

Article 1

When communicating by electronic means, the means must be non-discriminatory, generally available and possible to use together with such equipment and software as is generally used.

Correction of errors, clarification and supplementation

Article 2

The contracting authority may allow an applicant to correct a written error or some other manifest error in the application. The contracting authority may request that an application is clarified or supplemented.

Chapter 7 Exclusion of applicants

Circumstances that may result in exclusion of an applicant

Article 1

The contracting authority may exclude an applicant that

1. is bankrupt or is being wound up, is under compulsory administration or is the subject of a composition or has indefinitely stopped their payments or is subject to a prohibition on conducting business,
2. is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by the court or composition or any other similar proceedings,
3. has been convicted by a judgment which has the force of res judicata for an offence relating to professional practice,

4. has been guilty of grave professional misconduct and the contracting authority can prove this,
5. has not fulfilled their obligations relating to social insurance charges or tax in their country of origin or other State within the EEA area, or
6. in some essential respect has failed to provide information requested or provided incorrect information required pursuant to this provision.

If the applicant is a legal person, the applicant may be excluded if a representative for the legal person has been sentenced for an offence referred to in the first paragraph, Section 3 or committed such an error as referred to in the first paragraph, Section 4.

The contracting authority may request that an applicant proves that there are no grounds for excluding them pursuant to the first paragraph, Section 1, 2, 3 or 5.

Certificates and evidence regarding applicants

Article 2

The contracting authority shall, as evidence for there not being grounds for excluding an applicant, accept an extract from an official register of other equivalent document as regards a circumstance as referred to in Section 1, first paragraph, item 1, 2 or 3 and a certificate from a competent authority as regards a circumstance as referred to in Section 1, first paragraph, item 5.

If such documents or certificates as referred to in the first paragraph are not issued in the applicant's country of origin or the country whence they come or do not cover all of the cases as referred to in Section 1, first paragraph, items 1 to 3, they may be replaced by a statement provided under honour and faith of by a similar assurance.

If an applicant is registered in an official list of approved suppliers in a country within the EEA, the contracting authority shall assume that the applicant cannot be excluded as a supplier according to Section 1, first paragraph, items 1 to 5.

Chapter 8 Approval and conclusion of contract

Decision on approval

Article 1

The contracting authority shall approve all applicants satisfying the requirements referred to in the contract notice and contract documents and which have not been excluded pursuant to Chapter 7, Section 1.

Notification of decision

Article 2

When a decision has been made concerning whether an applicant may participate in the system of choice, the contracting authority shall as soon as possible give notice to the applicant of the decision and the reasons for it.

Such a notification shall be provided to the applicants even when the contracting authority decides to discontinue the establishment of the system of choice.

If the contracting authority decides not to approve the applicant as a supplier in the system of choice, the contracting authority shall provide information on how rectification can be sought.

Concluding the contract

Article 3

When the contracting authority has granted its approval, the authority shall conclude a contract with the supplier without delay.

Chapter 9 Information and no-choice alternative

The contracting authority's information responsibility

Article 1

The contracting authority shall provide to private parties information about all suppliers with which the authority has concluded contracts within the framework of the system of choice. This information shall be objective, relevant, comparable, easy to understand and readily available.

No-choice alternative

Article 2

For the private party who does not choose a supplier, the contracting authority shall provide a no-choice alternative.

Chapter 10 Remedies, etc.

Rectification

Article 1

A supplier, who claims that a contracting authority has breached a provision of this Act, may apply for rectification to a general administrative court.

Only the applicant that has not been approved can apply for rectification of the contract authority's decision according to Chapter 8, Section 1.

An application for rectification shall be submitted in writing.

Article 2

If the contracting authority has breached any provision of this Act and this has meant that a supplier suffered or may suffer damage, the court shall decide that the contracting authority shall implement rectification.

Competent court

Article 3

An application for rectification according to Section 1 shall be made to the general administrative court in whose judicial district the contracting authority is based.

An application according to Section 1, second paragraph shall have been received by the general administrative court within three weeks from when the notification was provided according to Chapter 8, Section 2. Leave to appeal is required to make an appeal to the Administrative Court of Appeal. Act (2009:856).

Prohibition of appeal

Article 4

A decision to which this Act applies may not be appealed against under Chapter 10 of the Local Government Act (1991:900).

Damages

Article 5

A contracting authority that has not complied with the provisions of this Act must compensate the applicant for damage caused thereby. An action for damages which is based on a decision under Chapter 8, Section 1 shall be instituted within one year from the date on which the contracting authority decided not to approve the applicant.

Actions for damages shall be instituted at a general court.

If an action is not brought in time, the right to damages is lost.

Exemptions from rectification and damages

Article 6

The provisions of this Chapter concerning rectification or damages do not apply to the decision of a contracting authority on information and no-choice alternative.

Supervision

Article 7

The Government shall appoint an authority to exercise supervision of the system of choice according to this Act.

Article 8

The supervisory authority may obtain such information from the contracting authority as may be necessary for the supervision. This information shall in the first instance be collected through written procedure. If it is more suitable, owing to the scope of the material, urgency or some other circumstance, the information may be collected by visiting the contracting authority or verbally.

Article 9

A contracting authority is liable to provide the information that the supervisory authority requests for its supervision.

Appendix 3, Swedish Code of Statutes – SFS 2007:1091
(From the *Swedish Public Procurement Act*)

List of service contracts (B Services)

Category	Description	CPC reference number	CPV reference number
17	Hotel and restaurant services	64	From 55000000-0 to 55524000-9 and from 93400000-2 to 93411000-2
18	Rail transport services	711	60111000-9 and from 60121000-2 to 60121600-8
19	Water transport services	72	From 61000000-5 to 61530000-9 and from 63370000-3 to 63372000-7
20	Supporting and auxiliary transport services	74	62400000-6, 62440000-8, 62441000-5, 62450000-1 From 63000000-9 to 63600000-5 (except 63370000-3, 63371000-0, 63372000-7) and 74322000-2, 93610000-7
21	Legal services	861	From 74110000-3 to 74114000-1
22	Personnel placement and supply services. Except employment contracts	872	From 74500000-4 to 74540000-6 (except 74511000-4) and from 95000000-2 to 95140000-5
23	Investigation and security services, except armoured car services	873 (except 87304)	From 74600000-5 to 74620000-1
24	Education and vocational education services	92	From 80100000-5 to 80430000-7

25	Health and social services	93	74511000-4, and from 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2)
26	Recreational, cultural and sporting services	96	From 74875000-3 to 74875200-5 and from 92000000-1 to 92622000-7 (except 92230000-2)
27	Other services, except contracts for the acquisition, development, production or co-production of programmes by broadcasting organisations and contracts for broadcasting time.		



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