

# Consolidation Act on quality standards and the free choice of suppliers of personal and practical assistance, etc.

Pursuant to sections 139, 92(4) and 93(3) of the Act on Social Services, cf. Consolidated Act No. 929 of 5 September 2006 as amended by Act No. 1584 of 20 December 2006, the following is laid down:

## Part 1

### *Quality standards*

**1.-(1)** At least once annually, the local council shall prepare a quality standard for personal and practical assistance, etc. and local authority rehabilitation and maintenance treatment under sections 83 and 86 of the Act.

(2) The quality standard shall include general service information to citizens about the assistance they can expect to receive from the local authority in the event that they require personal and practical assistance, etc. or local authority rehabilitation and maintenance treatment under sections 83 and 86 of the Act.

(3) The quality standard shall include details on the service level prescribed by the local council for services under sections 83 and 86 of the Act. Details on contents, scope and implementation of assistance shall be accurate and ensure consistency between the service level, resource allocation, decisions and provision of assistance. Moreover, the quality standard shall include operational targets on how this is ensured and details on the follow-up of defined targets; cf. section 2 hereof.

(4) The quality standard shall include the quality requirements, cf. sections 7-11 hereof, laid down by the local council to be met by suppliers of assistance pursuant to section 83 of the Act, including staff qualification requirements, occupational health and safety requirements, etc.

**2.** At least once annually, the local council shall follow up on the targets set out in section 1(3) hereof with respect to the quality and management of assistance pursuant to sections 83 and 86 of the Act, and on the quality requirements set out in section 1(4) hereof to be met by suppliers pursuant to section 83 of the Act.

## Part 2

### *The local council's decision on the free choice of supplier*

**3.-(1)** The local council shall decide:

- (i) to approve and conclude an agreement with any supplier meeting the quality and price requirements decided upon; cf. sections 7-15 hereof and section 91 of the Act, or
- (ii) to invite tenders for the supply of services under section 83 of the Act subject to the EU rules on public procurement; cf. section 91 of the Act.

(2) The local council shall ensure that suppliers are not subject to discrimination.

**4.-(1)** Prior to inviting tenders for the supply of services pursuant to section 3(1)(ii) hereof, the local council shall decide whether, once the procurement round has been completed, to conclude contracts with two, three, four or five suppliers of personal and practical assistance, respectively. Prior to inviting tenders for a meal service scheme, the local council shall decide whether, once the procurement round has been completed, to conclude contracts with two or more suppliers. The local council's decision shall appear from the tender documents.

(2) Following a call for tenders pursuant to section 3(1)(ii) above, the local council shall conclude contracts with the suppliers of personal and practical assistance, respectively, and with respect to suppliers of meal services at least two of the suppliers who submitted the economically most advantageous bid; cf. subsections (1), (3) and (4).

(3) The local council may decide to conclude a contract with fewer suppliers than stipulated where the local council does not receive a sufficient number of bids. The local council shall conclude contracts with all suppliers submitting bids provided the number of bids does not exceed the number previously decided upon, but see also subsection (4) hereof. Contracts shall be entered into with at least two suppliers.

(4) The local council shall deny entering into a contract with a supplier in a call for tenders where the bid submitted by said supplier exceeds the lowest bid by more than 10 per cent, even where the bid is within the predefined number. The local council may decide to conclude a contract with a supplier whose bid exceeds the lowest bid by more than 10 per cent where this is a precondition for at least two suppliers providing the services put up for tender.

(5) Where, following a call for tenders, it is not possible to conclude contracts pursuant to the provisions set out in subsections (2), (3) and (4) above, the rules on the approval of any qualified supplier pursuant to section 3(1)(i) above shall apply.

**5.-(1)** The local council may decide that calls for tenders pursuant to section 3(1)(ii) hereof shall include the provision of services throughout the local authority area or in one or more of the local authority districts; cf. section 11 hereof. Where the local council decides that calls for tenders shall apply exclusively to specific districts, the rules on the approval of any qualified supplier under section 3(1)(i) hereof shall apply to each of the other districts of the local authority area.

(2) The local council may decide that bids pursuant to section 3(1)(ii) hereof shall include the provisions of services within one, more or all categories; cf. section 10 hereof. Where the local council decides that calls for tenders shall only be made for specific categories pursuant to section 3(1)(ii) hereof, the rules on the approval of any qualified supplier pursuant to section 3(1)(i) hereof shall apply all other service categories.

#### *Group of persons*

**6.-(1)** Recipients of personal and practical assistance pursuant to section 83 of the Act shall, once the local council has concluded a contract with several suppliers, pursuant to section 3-5, choose which supplier is to provide the services agreed upon pursuant to section 83; cf. sections 88 and 89.

(2) The local council shall determine a time limit within which recipients of assistance pursuant to section 83 shall be entitled, subject to request, to switch to another approved supplier. The deadline for switching supplier shall be fair and shall not exceed one month from the end of the month in which the recipient requests a change of supplier.

(3) Residents in nursing homes, social care homes and similar housing units, cf. section 93, who receive assistance pursuant to section 83 of the Act shall be entitled to choose supplier pursuant to section 92 of said Act.

### Part 3

#### *Quality and price requirements*

**7.-(1)** Pursuant to section 3(1)(i) hereof, the local council shall determine and publish quality and price requirements to be met by suppliers of personal and practical assistance.

(2) Where the local council has decided to put the supply of services pursuant to section 3(1)(ii) hereof up for tender, the local council shall only publish the quality requirements decided upon relating to the services and districts to which the call for tenders apply; cf. section 5 hereof.

*Laying down quality requirements*

**8.-(1)** Pursuant to section 91(1) of the Act, the local council shall determine the quality requirements to be met by suppliers of personal and practical assistance pursuant to section 83 of the Act. The quality requirements shall reflect the quality standard adopted by the local council with respect to the contents and supply of services; cf. section 1 above.

(2) The quality requirements shall form the basis of the local council's approval and conclusion of contracts with suppliers of personal and practical assistance; cf. 17(1) and (2) hereof.

**9.-(1)** Pursuant to section 91(1) of the Act, the local council shall demand that the supplier make available contingency services to ensure the supply of the services agreed upon and to ensure that the agreement to supply services is fulfilled. Moreover, the local council shall demand that the supplier observes the general guidelines adopted by the local council with respect to alternative assistance in the event of cancellations, etc. cf. section 90 of the Act.

(2) The local council shall decide the requirements to be met by suppliers with respect to any change in the group of individuals receiving assistance pursuant to section 83 of the Act, any change in individual recipients' need for assistance or any change in the supply of services. The local council shall lay down requirements to the effect that the supplier informs the authorities about changes in a recipient's need for assistance and about how such information from the supplier is to be communicated.

(3) The local council shall demand that the supplier accepts all recipients choosing the supplier in question.

(4) The local council may demand that the supplier provides security for the performance of the contract. Such security shall be proportionate to the supplier's estimated turnover.

(5) The local council shall not adopt quality requirements to be met by suppliers of meal services having the result that all suppliers apply a specific manufacturing process.

(6) Pursuant to section 93(2) of the Act, the local council shall decide on requirements to be met by suppliers of local authority services to residents in nursing homes, etc. Moreover, the local council shall decide on quality requirements with respect to other services supplied by the local authority supplier in connection with the operation of nursing homes, etc. The quality requirements with respect to services supplied pursuant to section 83 of the Act shall be laid down in accordance with the guidelines of section 8(1) hereof.

**10.-(1)** The local council shall lay down specific quality requirements with respect to the service categories personal assistance, meal service including home delivery, meal service excluding home delivery and other types of practical assistance.

(2) The local council shall lay down specific quality requirements with respect to all services produced outside the home.

(3) The local council shall lay down quality requirements with respect to services categories other than those set out in subsections (1) and (2) above.

(4) The quality requirements shall form the basis on which suppliers within each service category are approved. Any supplier meeting the quality requirements of each service category shall be approved for the supply of services within the category in question; cf. section 17(1) hereof, but see also section 3(1)(ii) above.

**11.-(1)** The local council shall decide whether to divide the local authority area into districts; cf. section 5 above.

(2) Where the local council decides to divide the local authority into districts, cf. subsection (1) above, such division shall be reflected in the requirements to be met by the suppliers.

*Laying down price requirements*

**12.-(1)** The local council shall at least annually lay down price requirements to be met by suppliers of personal and practical assistance, cf. section 3(1)(i) hereof.

(2) Price requirements shall be based on the hourly rate for personal and practical assistance in the home, respectively; but see also subsections (3) and (4) below.

(3) Price requirements for services produced outside the home shall be determined on the basis of each service.

(4) The local council shall decide on a fixed meal service subsidy. The local authority subsidy shall not exceed the price of the service chosen by the recipient; cf. the Consolidation Act on payment for general services and for personal and practical assistance, etc.

**13.-(1)** The local council shall as a minimum decide on price requirements for personal assistance during normal working hours, personal assistance outside normal working hours, meal service including home delivery, meal service excluding home delivery and other types of practical assistance.

(2) The local council shall lay down specific price requirements for services produced outside the home; cf. section 10(2) hereof.

(3) The local council may lay down price requirements other than those set out in subsections (1) and (2) hereof.

(4) Where the average, long-term costs vary between districts, cf. section 11 hereof, this shall be reflected in the price requirements to be met by suppliers within the districts; cf. section 14 hereof.

**14.-(1)** The local council shall lay down price requirements based on a calculation of the average, long-term costs of the local authority supply of personal and practical assistance; but see also section 15 hereof.

(2) The calculation of the local authority's average, long-term cost of the local authority supply of personal and practical assistance shall include all direct and indirect costs associated with the supply of personal and practical assistance.

(3) In connection with the presentation of the local authority financial statements, follow-up on and checks of whether the price requirement was correctly determined, including whether the efficiency enhancements or changes to the quality standards laid down in section 15(1) hereof have been implemented, shall be conducted; cf. section 19 hereof.

(4) The local council shall adjust the future price requirement for personal and practical assistance no more than two months after being informed about any discrepancy between the price requirement and the average, long-term costs, cf. section 19 hereof.

**14 a. -(1)** The local council shall at least annually determine the value of the service certificate for services provided by the local council under the service certificate scheme. Such adjustment shall take place in connection with the local council's annual decision on price requirements to be met by suppliers of personal and practical assistance; cf. section 12 hereof.

(2) The local council shall calculate the value of the service certificate on the basis of price requirements determined on the basis of a calculation of the average, long-term cost of the local authority supplier or the private-sector supplier, where no local authority supplier is available; cf. section 14(1) hereof. This means that the value of the service certificate shall be calculated on the basis of the price requirements to be published by the local authority pursuant to section 16 hereof. The value of the service certificate shall not exceed the actual costs of the local authority or private-sector principal supplier of supplying the same service. Where the local authority had decided to put services up for tender, the price of the successful bid shall apply.

(3) The value of the service certificate shall equal the total direct and indirect cost of supplying personal and practical assistance, cf. section 14(2) hereof. When calculating the value of the service certificate, the local council may decide to deduct an amount equal to the local authority or private-

sector supplier's indirect costs of no relevance to the service provided under the scheme, i.e. indirect costs such as rent and IT, which are not a prerequisite for providing assistance under this scheme.

(4) The citizen shall not receive cash funds in connection with the service certificate. Where the citizen employs a private individual to provide assistance, the local council shall normally be responsible for undertaking any related administrative duties. Such as the payment of wages, tax reporting, holiday pay, contributions to the Labour Market Supplementary Pension Fund, contributions to the private equalisation scheme for maternity/paternity, the arranging and payment of industrial injury insurance and pay during sickness, etc. Where the citizen employs a company to provide assistance, the company shall undertake any administrative duties relating to its own employees.

(5) Where the recipient of a service certificate chooses to delegate his/her duties as employer to a private individual, an organisation or private undertaking, the citizen shall bear the cost thereof. Any costs related to the duties as employer under the service certificate, including the drafting of contracts, shall be included in the value of the certificate.

**15.-(1)** Pricing subject to section 14 hereof may be derogated from in part when based on anticipated efficiency enhancements being introduced by the local authority supplier or changes in local authority quality standards; cf. section 1. Appropriations shall be considered under the local authority budget where anticipated local authority supplier efficiency enhancements or quality standard changes are considered when determining the price requirement; cf. subsection (1) hereof.

(2) Where services within relevant categories are not provided by a local authority supplier, the local council shall define the price requirements as the average, long-term cost of services provided by one or more private-sector suppliers. The local authority may depart from the pricing set out in subsection (1) hereof where such decision is based on anticipated supplier efficiency enhancements, changes in local authority quality standards or amendments to any agreement entered into between the local council the private-sector supplier(s), cf. subsection (1) hereof.

(3) Pricing pursuant to section 14 hereof may also be departed from where the local council decides to invite tenders within the framework of the approval model. A call for tenders shall be conditional on the successful bidder subjecting to competition in accordance with the rules of the approval model, including disclosure of the basis of the contract between the authority and supplier. This means that the price requirement to be met by other suppliers seeking approval within the local authority shall be the actual costs of the contract entered into by the local council and the successful private-sector supplier.

(4) Section 14(3) and (4) hereof shall apply correspondingly to section 15(2) and (3) hereof.

#### *Publication of quality and price requirements*

**16.-(1)** The local council shall publish the quality and price requirements to be met by suppliers of personal and practical assistance under sections 7-15 hereof and any price requirement documentation.

(2) As part of the publication, the local council shall report the quality and price requirements to be met by suppliers of personal and practical assistance to the Ministry of Social Affairs, which shall be in charge of electronic publication. The Minister for Social Affairs shall lay down rules on reporting.

(3) The quality and price requirements adopted by the local council shall, at the earliest, become effective on the day of publication of the reported information; cf. subsection (2) hereof.

(4) Notwithstanding subsection (3) above, any additional payment, cf. section 19 hereof, to private-sector suppliers shall concern the entire period during which a discrepancy has existed between the price requirement and the average, long-term costs of supply.

#### Part 4

#### *Approval of and payment to suppliers*

**17.-(1)** Pursuant to section 3(1)(i) hereof, the local council shall approve and conclude contracts with any supplier of personal and practical assistance meeting the quality and price requirements agreed upon and published, but see also subsections (2) and (3) hereof.

(2) Pursuant to section 3(1)(ii) hereof, the local council shall conclude contracts with successful bidders under sections 4 and 5 hereof, but see also subsections (1) and (3) hereof.

(3) The local council may, where warranted by special reasons, refuse to approve and conclude a contract with a supplier pursuant to subsection (1) and (2) hereof. Such refusal shall be motivated by reasons similar to those set out in Article 45 of the Procurement Directive.

(4) Having concluded a contract with a supplier, cf. subsections (1) or (2) hereof, the local council shall immediately report this electronically to the Ministry of Social Affairs, which shall be in charge of electronic publication. The Minister for Social Affairs shall lay down rules on reporting.

**18.-(1)** The local council shall pay all approved suppliers of personal and practical assistance, etc., cf. section 17 hereof, in accordance with the published price requirements and the terms of the contract entered into between the local council and the supplier.

(2) The local council shall pay for the supply of services subject to a call for tenders, cf. section 3(1)(ii) hereof, in accordance with the terms of the contract entered into between the local council and the supplier.

(3) Payment for meal service shall be in accordance with the provisions of the Consolidation Act on payment for general services and for personal and practical assistance, etc. under which the recipient shall pay any difference between the local authority meal service subsidy and the price of the chosen service.

#### *Additional payment to private-sector suppliers*

**19.-(1)** The local council shall make additional payments to private-sector suppliers where it is subsequently ascertained that the price requirements agreed upon did not meet the supplier's average, long-term cost of providing personal and practical assistance, cf. sections 14 and 15(2) and (3) hereof.

(2) Additional payment shall be made not later than two months after the local council was notified that the price requirement did not meet the supplier's average, long-term cost of providing personal and practical assistance. Additional payment shall concern the entire period during with the price requirement was too low.

### Part 5

#### *Accounts and supervision*

**20.-(1)** The local council shall, on a continuous basis, register income and expenses related to local authority suppliers.

(2) The local council shall prepare a statement on local authority expenses incurred by the local authority's supply of personal and practical assistance, including any variances compared with the cost calculation pursuant to sections 14 and 15 hereof.

#### *Commencement*

**21.** This Consolidation Act shall take effect on 1 January 2007. At the same time Consolidation Act No. 262 of 27 March 2006 on quality standards and the free choice of personal and practical assistance supplier, etc. is repealed.