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Please reply to UNISON Greater London Regional Secretary
Maggi Ferncombe via m.ferncombe@unison.co.uk

To:
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17 July 2020

Cc:
Homerton University Hospital NHS Foundation Trust CEO Tracey Fletcher
Hackney South and Shoreditch MP Meg Hillier
Hackney North and Stoke Newington MP Diane Abbott

Dear Secretary of State for Health and Social Care,

I am writing on behalf of the trade union UNISON to ask for your urgent intervention to halt what we believe to be an outrageous misapplication of procurement procedures at Homerton University Hospital NHS Foundation Trust.

The Trust has issued a Voluntary Ex-Ante Transparency notice setting out its intention to award a five-year contract without competition to contractor ISS Mediclean for its continued soft facilities management services.

We acknowledge that, under the Public Contracts Regulations 2015, award by a negotiated procedure without prior publication of a contract notice is permissible in the following specific circumstances:

(a) where no tenders, no suitable tenders, no requests to participate or no suitable requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Commission where it so requests;

(b) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:—

(i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance,

(ii) competition is absent for technical reasons,

(iii) the protection of exclusive rights, including intellectual property rights,

but only, in the case of paragraphs (ii) and (iii), where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;

(c) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with.

However, UNISON believes that the Trust is mistaken in its claim that its intended five-year extension falls within the category of “where the works, supplies or services can be supplied only by a particular economic operator” because “competition is absent for technical reasons.”

We believe that the Trust’s justification “that a period of stability is required in its facilities management services, to ensure that these critical services can continue to be delivered with the same personnel and processes in place, until such time as the major change programme is completed” can in no way be interpreted as meeting the criteria for award without competition and therefore it is in breach of EU and UK procurement regulations.

UNISON believes that the award is outside the Public Contract Regulations criteria because:

- A number of suitable tenders would clearly be forthcoming under an open procedure, since eight bidders sought the contract the last time it went out to tender. An in-house option would have been among the bidders for a new contract.
- There is nothing unique about the soft facilities management services that ISS is providing and stability during a major change programme does not make it impossible for another provider to deliver the service. Contracts continually change hands, leading to the TUPE transfer of the same staff that have been delivering the service and helping to ensure continuity of service delivery.
- The Trust has had five years to plan for the known end date of the contract. It has the option of extending the existing contract by two years to 2022 without resorting to a five-year award without competition. We acknowledge that the government has issued procurement guidance (PPN 01/20) highlighting that contract renewal without notice may be justified during the Covid-19 pandemic, but this is only on the basis of the greater urgency with which some contracts specific to measures against Covid-19 must be agreed. This contract is not an unexpected urgent demand resulting from Covid-19.

Therefore, we consider this denial of competition in the award of a contract worth an estimated £30m to be discriminatory against possible bidders, which could have included alternative options such as an in-house bid or a wholly owned subsidiary company.

In conclusion, UNISON is requesting that, as Secretary of State for Health and Social Care, you urgently advise the Trust to defer the award of this contract without competition to allow for a full investigation of the issues raised, and we hope that such an investigation will reach the same view as we have set out in this letter that the contract is not permissible under existing regulations. Unless such a step is taken, we feel that we will inevitably be forced to make a formal challenge to the contract award.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Maggi Ferncombe'. The signature is written in a cursive, flowing style with some loops and flourishes.

Maggi Ferncombe

UNISON Greater London Regional Secretary