

Call for tenders

Tender: Advisor services in the Project “Renewable Power-to-Heat in the Bitola Region”

Performance period: 1.Quarter 2025 until the end of the 3. Quarter 2025

Place of performance: Contractor’s place of work

Tender period: 14th October 2024, 12 am.

Award procedure: Negotiated award with or without a competitive tender (§12 German Regulation on sub-threshold procurement - UVgO)

Principal (Project Coordinator)

100 percent renewable foundation was established as a non-profit foundation in civil law in 2010 with its headquarter in Gerbach and office in Berlin, Germany.

Its goal is promoting a decentralized and collaborating energy transition that consists of 100 percent renewable energies. The foundation’s work is focused on „Learning Energy Transition“, „Shaping Energy Transition“ and „Communicating Energy Transition“. For more information see: www.100-prozent-erneuerbar.de

The project

A feasibility study is being carried out to pave the way for a climate-neutral district heating network in the Bitola region. It will provide guidance on how to design a successful transformation of the heating sector and clarify several barriers related to infrastructure planning, investor’s involvement and capacity development. It will also present a basis for future public and private investment, the potential of which has not yet been fully realized for power-to-heat projects.

The GAUSS Institute - Foundation for New Technologies, Innovations, and Knowledge Transfer is in the lead. In the role as project partner the 100 percent renewable foundation from Germany writes a paper regarding energy policy advice for this region.

Status quo

The North Macedonian region of Bitola is part of the “Initiative for coal regions in transition in the Western Balkans and Ukraine”, which supports the region’s transitions to a low-carbon economy. A district heating network, currently under construction, is to be powered by steam from a nearby coal-fired power plant. Decarbonising the system could be realized with the use of large-scale heat pumps supplied with as much renewable energy as possible.

Tasks of the advisor

100 Percent Renewable foundation call for tenders for an advisor skilled in the energy market and policy from North Macedonia.

His/her tasks are:

- Strategic advisory support on writing the policy paper. The paper is addressed to both the federal and municipal level.
- The paper contains recommendations on policy changes for:
 - the implementation of the local study in Bitola
 - the implementation of similar projects in North Macedonia
 - the expansion of renewable energies in the electricity sector for both federal and municipal level.
 - The energy market design in order to link the renewable electricity and heat sectors in a meaningful way and to guarantee security of supply and system stability.
- Languages: English
- Optional: Willingness to travel to Bitola

The advisory services shall be delivered within the framework of 12 days (i.e. 20 full per diem rates).

Decision Process

Tenders shall be provided by 14th October 2024, 12 am and sent by email to info@100-prozent-erneuerbar.de Tenders are only valid if they include all necessary information related to this call.

Steps of the decision process are

1. Formality check (tender sent in due, formal completeness, reasons for exclusion)
2. Qualification in the field
3. Selection of the economically most advantageous tender

Selection criteria

The provider must identify that demonstrates the following experience and qualifications:

- Knowledge about energy policy (electricity and heating/cooling sector) in North Macedonia including:
 - legal situation
 - current regulation of the electricity and heating market
 - responsibilities in the energy and heating market (who can/may/must decide the proposed changes)
 - decision-making processes within the energy and heating market
 - tariff systems, financing models, intervention rights (e.g. shutdowns to ensure system stability)
 - current discussed reform proposals and potentially necessary new responsibilities and competencies in the renewable energy system
- Knowledge of stakeholder landscape in the emerging field of energy and heating market in North Macedonia
- Experience in the North Macedonian energy sector, especially in relation to renewable energies.
- Experience in the cooperation with local stakeholders and the presentation of results to local decision-makers
- At least three References
- Necessary capacity to fulfil to perform services within the performance period (Brief description of the project team or substitute)

Award criteria

Award is made to the most economically advantageous tender, which is determined as follows:

- Price: 50%
- Expertise in similar projects (references): 50%

Travel expenses will not be reimbursed and shall be covered by the budget offered. Service should be rendered until the end of the third quarter of 2025. An agreement in written form will be made after the tender is accepted by the 100 percent renewable foundation.

Contact

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Enclosure

Declaration
Agreement (draft)
Regulation on sub-threshold procurement - UVgO

Tenderer’s declaration

Tender: Advisor services in the Project “Renewable Power-to-Heat in the Bitola Region”

Performance period: 1.Quarter 2025 until the end of the 3. Quarter 2025

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The tender is submitted by

Name/Company	
Contact person	
Address	
Country	
Phone	
E-mail	
Enclosure	

- I/We hereby confirm that I/We have the necessary qualifications (expertise, performance and reliability) to carry out the order. In addition to economic efficiency, performance also relates to the personnel and technical aids and equipment required.

- I/We hereby declare that I / WE have examined and accepted the terms and conditions included in the tender specifications and its Annexes. We propose to provide the requested services on the basis of our offer.

Place, Date

Signature

Note: If the preceding fields are not checked or the document is not signed, this will lead to exclusion from the procedure!



Federal Ministry of Economic Affairs and Energy

Notice

of the Rules of Procedure for the award of public supply and service contracts below the EU thresholds

(Regulation on sub-threshold procurement - UVgO)

- Issue 2017 -

Entry into force 02.02.2017

The following contains the publishing of the rules of procedure for the award of public supply and service contracts below the EU thresholds (Regulation on sub-threshold procurement - UVgO), which has been agreed between the Federal Ministries, and the Federal States.

It supersedes the Regulation on Contract Awards for Services - Part A (VOL / A) - Edition 2009 - of 20 November 2009 (BAnz. No. 196a, BAnz. 2010 S. 755). The UVgO does not already come into force with the publication in the Federal Gazette but is only enforced by the new version of the General Administrative Provisions on Section 55 of the Federal Budget Code or for the Federal States by the corresponding state regulations. After their entry into force, the provisions of the UVgO apply for the award of supply and service contracts below the thresholds under § 106 of the Act against Restraints of Competition (EU thresholds).

The UVgO is structurally based on the Procurement Ordinance above the EU thresholds of April 2016.

Berlin, 2 February 2017

I B 6 - 26 19 02

Federal Ministry
of Economic Affairs and Energy

On behalf of
Dr. Solbach

Rules of procedure for the award of public supply and service contracts below the EU thresholds (Regulation on sub-threshold procurement - UVgO)

- Issue 2017 -

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Chapter 1

General provisions and communication

Subchapter 1

General provisions

§ 1

Purpose and scope

(1) These Rules of Procedure clarify the procedure to be followed for the award of public supply and service contracts and framework agreements not subject to Part 4 of the Law against Restraints of Competition because their estimated value excluding value added tax falls below the thresholds under Section 106 of the Law against Restraints of Competition.

(2) Furthermore, notwithstanding the attainment of the relevant threshold pursuant to Section 106 of the German Law against Restraints of Competition, these Rules of Procedure do not apply to situations for which the Act against Restraints of Competition provides exceptions to the applicability of Part 4 of the Law against Restraints of Competition in Sections 107, 108, 109, 116, 117 or 145..

(3) The regulation on reserved contracts pursuant to Section 118 of the Law against Restraints of Competition shall also apply mutatis mutandis within the scope of these Rules of Procedure.

§ 2

General Principles for making awards

(1) Public contracts are awarded through competition and through transparent procedures. The principles of cost-effectiveness and proportionality shall be upheld in the process.

(2) The participants in a procurement procedure shall be treated equally unless discrimination is expressly required or permitted by virtue of these Rules of Procedure or other provisions.

(3) In making the award, aspects of quality and innovation as well as social and environmental aspects shall be considered in accordance with these Rules of Procedure.

(4) The interests of small and medium-sized undertakings shall primarily be taken into account in public procurement procedures.

(5) The rules on prices for public contracts remain unaffected.

§ 3

Maintenance of confidentiality

(1) Unless otherwise specified in these Rules or other provisions of law, the contracting authority may not share any information revealed by the undertakings which they have marked as confidential. This expressly includes business and trade secrets and the confidential aspects of the tenders, including their enclosures.

(2) The contracting authority must safeguard the integrity of the data and the confidentiality of the requests to participate and tenders, including their enclosures, for the entire communication and during the exchange and storage of information. The requests to participate and tenders, including their enclosures, as well as the documentation of opening and assessment of the requests to participate and tenders shall also be treated confidentially following completion of the procurement procedure.

(3) The contracting authority may prescribe targeted requirements for undertakings to protect the confidentiality of the information in the course of the procurement procedure. The

submission of a non-disclosure agreement is expressly included in this.

§ 4

Avoidance of conflicts of interest

(1) Members of the executive body or employees of the contracting authority or of a procurement service provider acting in the name of the contracting authority for whom a conflict of interest exists may not participate in a procurement procedure.

(2) A conflict of interest exists for persons who participate in performing the procurement procedure or who are able to influence the outcome of a procurement procedure and who have a direct or indirect financial, economic or personal interest that could compromise their impartiality and independence in the context of the procurement procedure.

(3) It is presumed that a conflict of interest exists when the persons named in paragraph (1)

1. are candidates or tenderers;
2. advise or otherwise assist a candidate or tenderer, or represent a candidate or tenderer as a legal representative or only in the procurement procedure;
3. are employed or work
 - a) with a candidate or tenderer for compensation or with a candidate or tenderer as a member of the managing board, supervisory board or similar body, or
 - b) for an undertaking engaged in the procurement procedure if such undertaking at the same time has business relations with the contracting authority and with the candidate or tenderer.

(4) The presumption of paragraph (3) also applies to persons whose relatives satisfy the requirements under paragraph (3), numbers 1 through 3. Relatives are: a person to whom one is engaged to be married, spouse, domestic partner, lineal relations by blood and by marriage, siblings, children of siblings, spouses and domestic partners of siblings and siblings of spouses and domestic partners, siblings of the parents or foster parents and foster children.

§ 5

Participation in preparation of the procurement procedure

(1) If an undertaking or an undertaking associated therewith has advised the contracting authority or participated in another manner in the preparation of the procurement process (previously participating undertaking), the contracting authority shall take appropriate measures to ensure that competition is not distorted through the participation of such undertaking.

(2) The measures under paragraph (1) particularly include briefing the other undertakings participating in the procurement procedure regarding the relevant information that was exchanged or that results in association with the previously participating undertaking's inclusion in the preparation of the procurement procedure and setting appropriate deadlines for arrival of tenders and requests to participate.

(3) If the competitive advantage of the previously participating undertaking cannot be remedied by other less restrictive measures, that undertaking may be excluded from the procurement procedure. Prior to this, the undertaking shall be given the opportunity to prove that its participation in the preparation of the procurement procedure cannot distort competition.

§ 6

Documentation

(1) The procurement procedure must be documented from the outset in text form in accordance with Section 126b of the Civil Code, so that the individual stages of the procedure, the individual measures and the justification of the individual decisions are recorded.

(2) The documentation as well as the tenders, requests to participate and their enclosures

must be kept for at least three years from the date of the award. Other regulations for storage remain unaffected.

Subchapter 2 Communication

§ 7

Principles of communication

(1) The contracting authority and the undertakings shall in principle use devices and programs for electronic data transmission (electronic means) in accordance with these Rules of Procedure to send, receive, forward and store data in a procurement procedure.

(2) Communication in a procurement procedure may be oral if it does not pertain to the procurement documents, the requests to participate or the tenders and if it is adequately documented in a appropriate manner.

(3) The contracting authority may require that every undertaking provide an unambiguous business name and an electronic address (registration). The contracting authority may not require any registration to access the contract notice and the procurement documents; voluntary registration is permitted.

(4) Sections 10 to 12 of the Procurement Ordinance apply accordingly to the requirements of the electronic means used and their use.

Chapter 2 Procurement procedure

Subchapter 1 Types of procedures

§ 8

Selection of the type of procedure

(1) Public procurement is conducted by means of a public invitation to tender, a limited invitation to tender with or without a competitive tender and a negotiated award with or without a competitive tender.

(2) The public invitation to tender and the limited invitation to tender after a competitive tender are available to the contracting authority at its option. The other types of procedures are only available to the extent they are permitted by paragraphs (3) and (4). Chapter 3 remains unaffected.

(3) The contracting authority may award contracts by means of a limited invitation to tender without a competitive tender where:

1. a public invitation to tender has not had an economic result or
2. a public invitation to tender or a limited invitation to tender with a competitive tender would cause an expense for the contracting authority or the candidates or the tenderers that would be disproportionate to the advantage gained or the value of the service.

(4) The contracting authority may award contracts by means of negotiated award with or without competition competitive tender where

1. the contract includes design or innovative solutions,

2. the contract cannot be awarded without prior negotiations because of specific circumstances related to the nature, the complexity or the legal and financial framework or because of the risks attached to them;
3. the performance in terms of type and scope, in particular its technical requirements, cannot be described so clearly and exhaustively before the procurement procedure that sufficiently comparable bids can be expected,
4. after the cancellation of a public or limited invitation to tender, a repetition does not promise an economic result,
5. the contracting authority`s needs cannot be met without adapting already available solutions,
6. it concerns the supply of goods or the provision of services for the performance of scientific-technical specialized tasks in the field of research, development and investigation which do not serve to maintain the general operation of the service and infrastructure of the contracting authority,
7. following development work, contracts must be awarded on a reasonable scale and for a reasonable period of time to undertakings involved in the development;
8. a public invitation to tender or a limited invitation to tender, with or without a competitive tender would cause the contracting authority or candidates or tenderers expenditures which would be disproportionate to the advantage or value of the service,
9. the performance is particularly urgent due to circumstances which the contracting authority could not foresee and the reasons for the particular urgency are not attributable to the contracting authority,
10. the performance can only be fulfilled or provided by a specific company,
11. it is a quoted and purchasable delivery on a commodity exchange,
12. Services provided by the original contractor,
 - a) intended for the partial renewal or extension of services already rendered,
 - b) where a change of company would result in the contracting authority having to buy a service with different technical characteristics, and
 - c) where such a change would result in technical incompatibility or disproportionate technical difficulties in use and maintenance,
13. Spare parts and accessories for machinery and equipment are to be procured from the supplier of the original service and that these parts cannot be procured commercially from other companies in an economically acceptable manner,
14. It provides an advantageous opportunity for more cost-effective procurement than would be the case for a public or limited tender,
15. it is necessary for reasons of security or secrecy,
16. the public contract should be awarded exclusively
 - a) in accordance with Section 1 (3) to workshops for persons with disabilities or to enterprises whose main purpose is the social and professional integration of persons with disabilities or disadvantaged persons, or
 - b) to prisons or
17. this is permitted by implementing provisions of a federal or state ministry up to a certain maximum value (value limit); such a limit may also be fixed for the award of supply or service contracts to a foreign service abroad or to a domestic service which procures abroad for a need to be covered there.

§ 9

Public invitation to tender

- (1) In the case of procedure public invitation to tender, the contracting authority publicly
(non-official publication - no guarantee - no liability - as of: 07/02/2017)

invites an unrestricted number of undertakings to submit tenders. Any interested undertaking can submit a tender.

(2) The contracting authority may only request information from the tenderers about their eligibility, the existence of exclusion reasons or the tender. Negotiations, in particular about changes in tenders or prices, are inadmissible.

§ 10

Limited invitation to tender after a competitive tender

(1) In the case of a limited invitation to tender after a competitive tender, the contracting authority publicly invites an unlimited number of undertakings to submit their requests to participate in the competitive tender. Any interested undertaking may submit a request to participate. By submitting a request for participation, the undertakings submit the information required by the client for the purpose of checking their eligibility and the absence of any grounds for exclusion.

(2) Only those undertakings which are requested to do so by the contracting authority after checking the transmitted information in accordance with Section 37 may submit a tender. The contracting authority may limit the number of candidates who are invited to submit tenders in accordance with Section 36.

(3) Section 9 (2) shall apply accordingly.

§ 11

Limited invitation to tender without a competitive tender

(1) In the case of a limited invitation to tender without a competitive tender, the contracting authority, without the prior execution of a competitive tender, requests several, in principle at least three, undertakings to submit a tender.

(2) The contracting authority may only request eligible undertakings for which there are no grounds for exclusion. Insofar as the client cannot determine conclusively the fulfilment of the eligibility criteria and the non-existence of exclusion grounds of a participating company in advance, they may also demand the necessary evidence and explanations from the company concerned with or after the invitation to tender has been sent,

(3) Section 9 (2) shall apply accordingly.

(4) The contracting authority should switch between the undertakings that are invited to submit a tender.

§ 12

Negotiated award with or without a competitive tender

(1) The contracting authority may carry out a negotiated award with or without a competitive tender. In case of a negotiated award with a competitive tender Section 10 (1) and (2) apply accordingly.

(2) In the case of a negotiated award without a competitive tender the contracting authority requests several, in principle at least three undertakings to submit a tender or to participate in negotiations. Section 11 (2) shall apply accordingly. The contracting authority should switch between the undertakings that are invited to submit a tender or to take part in negotiations.

(3) In the case of a negotiated award under Section 8 (4), Number 9 to 14 only one undertaking may be requested to submit a tender or to participate in negotiations.

(4) The entire content of the tenders may be negotiated, except for the minimum requirements and the award criteria stipulated by the contracting authority in the tender specifications. The contracting authority may award the contract, even without having previously negotiated, in accordance with the principles set forth in Section 2 (1) and (2) if it has indicated, in the contract notice, the procurement documents or the invitation to submit a tender, that it reserves the possibility of doing so and if the binding deadline of the tender has not yet expired.

(5) During the negotiations, the contracting authority shall ensure the equal treatment of all tenderers. In particular, it shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. It shall inform all tenderers of any changes in the tender specifications, particularly to the technical requirements or other components of the procurement documents. The contracting authority shall not disclose confidential information of a tenderer participating in the negotiations to the other tenderers negotiating without his consent. Such agreement shall not take the form of a general waiver but shall be given only with reference to the intended communication of specific information.

(6) When the contracting authority intends to conclude such negotiations after successful negotiations, it shall inform the tenderers and set a common deadline to submit final tenders which may no longer be negotiated.

§ 13

Adequate deadlines; Duty to extend a deadline

(1) The contracting authority shall set adequate deadlines for the receipt of the request to participate (participation deadline) and tenders (tender deadline) in accordance with sections 9 to 12 and for the validity of the tenders (binding deadline). In fixing the time limits, reasonable account shall be taken of the complexity of the performance, of the explanations and supporting documents (documents) to be provided, of the time taken to draw up the requests to participate and the tenders, of the time taken to evaluate the requests to participate and tenders, of the means of communication chosen and those previously published on the buyer's profile.

(2) The deadlines have to be the same für all candidates and tenderers.

(3) If tenders can only be made to the contracting authority after inspection at the place of performance or after inspection of the attachments to the tender documents on site, the deadlines for submissions must be set so that all undertakings are aware of all information necessary for drawing up the tender within ordinary circumstances.

(4) The deadlines set in accordance with paragraph (1) shall, if necessary, be adequately extended if:

1. additional material information is provided by the contracting authority before expiry of the tender deadline or
2. the contracting authority makes significant changes to the procurement documents.

§ 14

Direct order

Performances up to an estimated value of EUR 1 000 excluding VAT can be obtained without having to carry out a procurement procedure, taking into account the budgetary principles of efficiency and economy (direct order). The contracting authority shall switch between the awarded undertakings.

Subchapter 2

Special techniques and instruments in procurement procedures

§ 15

Framework agreements

(1) Framework agreements are agreements between one or more contracting authorities and one or more undertakings intended to fix the terms and conditions of the public contracts to be awarded during a given period, in particular as regards the price.

(2) A framework agreement shall be concluded by means of an applicable type of procedure under these Rules of Procedure. The prospective contract volume shall be calculated and announced as precisely as possible, but does not need to be finally determined. A framework

agreement may not be used improperly or in such a way as to prevent, restrict or distort competition.

(3) Individual contracts based on a framework agreement shall be awarded pursuant to the terms of the framework agreement. Individual contracts shall be awarded exclusively between the contracting entities named in the contract notice or in the procurement documents and those undertakings which are party to the framework agreement. No material changes to the conditions of the framework agreement may be made in the process.

(4) The term of the framework agreement may not be for more than six years unless the subject matter of the framework agreement is a justified special case.

§ 16

Occasional joint procurement; central procurement

Section 120 (4) of the Act against Restraints of Competition and Section 4 of the Procurement Ordinance apply on the use of central purchasing bodies and the occasional joint public procurement .

§ 17

Dynamic purchasing systems

(1) The contracting authority may use a dynamic purchasing system to purchase performances that are generally available on the market.

(2) When conducting the procurement process via a dynamic purchasing system, the contracting authority shall follow the regulations for a limited invitation to tender after a competitive tender.

(3) A dynamic purchasing system shall be set up and operated exclusively by electronic means. Sections 11 or 12 of the Procurement Ordinance apply *mutatis mutandis*.

(4) A dynamic purchasing system shall be available for the entire duration of its existence to all tenderers who meet the selection criteria in the relevant procurement procedure. The number of candidates admitted to the dynamic purchasing system shall not be limited.

(5) Access to a dynamic purchasing system is free of charge for all undertakings.

(6) For the operation of a dynamic purchasing system, Section 23 (1) and (3) to (6) of the Procurement Ordinance shall apply *mutatis mutandis*.

§ 18

Electronic auctions

The contracting authority may conduct an electronic auction within the framework of a public invitation to tender or a limited invitation to tender after a competitive tender, provided that the content of the procurement documents can be described with sufficient precision and the performance can be ranked using automatic evaluation methods. Electronic auctions may not have intellectual-creative services as their subject. An electronic auction may comprise several successive phases and shall take place with due regard for the principles governing the conduct of electronic auctions in accordance with Sections 25 (2) to (4) and 26 of the Procurement Ordinance.

§ 19

Electronic catalogues

(1) The contracting authority may require tenders to be submitted in the form of an electronic catalogue or to include an electronic catalogue. Tenders submitted in the form of an electronic catalogue may be accompanied by other documents.

(2) Section 27 (2) to (4) of the Procurement Ordinance applies *mutatis mutandis*.

Subchapter 3

Preparation of the procurement procedure

§ 20

Market research

(1) Before launching a procurement procedure, the contracting authority may conduct market research to prepare for the procurement and to inform undertakings of its procurement plans and requirements.

(2) Conducting procurement procedures solely for market research and for the purposes of ascertaining costs or prices is not permitted.

§ 21

Procurement documents

(1) The procurement documents include all information needed to make it possible for the candidate or tenderer to decide on participating in the procurement procedure. As a general rule, they consist of

1. the cover letter, particularly the invitation to submit requests to participate or tenders or cover letters for submission of the requested documents;
2. the description of the particulars for conducting the procedure (application requirements), including specification of the selection and award criteria unless already mentioned in the contract notice, and
3. the contract documents, which consist of the tender specifications and the contract terms.

(2) Part B of the Regulations on Contract Awards for Public Supplies and Services (*Vergabe- und Vertragsordnung für Leistungen*) in the version applicable at the time when the procurement procedure is initiated shall normally be included in the contract.

(3) Penalties for breach of contract shall only be agreed on for the exceeding of execution periods if the exceedance can cause considerable disadvantages. The penalty must be kept within adequate limits.

(4) Limitation periods other than the limitation periods set out in Part B of Regulations on Contract Awards for Public Supplies and Services in the version applicable at the time when the procurement procedure is initiated, shall only be agreed on if required by the nature of the service.

(5) Security deposits are to be waived in whole or in part, unless they appear exceptionally necessary for the proper and timely execution of the required performance. The security for the fulfilment of all obligations under the contract should not exceed five percent of the contract sum.

§ 22

Division by lots

(1) Contracts shall be divided into individual lots (partial lots) and awarded separately according to type or area of specialisation (trade-specific lots). When awarding the contract it is not necessary to divide or separate if this required for economic or technical reasons. The contracting authority may determine whether tenders may be submitted for one lot only, for several or for all lots. Even where tenders may be submitted for several or all lots, it may limit the number of lots to a maximum number for which an individual tenderer may receive an awarded.

(2) The contracting authority shall announce the requirements under paragraph (1) for public invitations to tender and types of procurement proceeding with a competitive tender in the contract notice, otherwise in the procurement documents. It shall indicate in the procurement documents the objective and non-discriminatory criteria it intends to apply for determining which lots will be awarded where the application of the award criteria would result in one tenderer being awarded more lots than the maximum number.

(3) Where more than one lot may be awarded to the same tenderer, the contracting authority may award contracts combining several or all lots where it has specified in the contract notice for public invitations to tender and types of procurement proceeding with a competitive tenderor otherwise in the procurement documents that it reserves the possibility of doing so and indicates the lots or groups that may be combined.

§ 23

Tender specifications

(1) The subject matter of the contract shall be described as clearly and comprehensively as possible in the tender specification so that the description is understandable in the same way to all undertakings and so that the tenders can be compared with each other. The tender specifications shall include the functional or performance requirements or a description of the task to be addressed, knowledge of which is required to prepare the tender, as well as the circumstances and conditions for provision of the performance.

(2) The tender specifications may also include aspects of quality as well as social, innovative and environmental characteristics. These may also refer to the process or method of production or provision of the performance or to another stage in the life cycle of the subject matter of the contract, including the production and supply chain, even where such factors do not form part of the material substance of the performance, provided that these characteristics are linked to the subject matter of the contract and proportionate to its value and objectives.

(3) The tender specifications may also specify whether the transfer of intellectual property rights or the grant of rights of use to the contracting authority are required.

(4) For all procurement which is intended for use by natural persons, the accessibility criteria for persons with disabilities or the design for all users shall be taken into account when preparing the tender specifications, except in properly justified cases.

(5) Designations for certain products or processes, such as brand names, may be used exceptionally, but only with the suffix "or equivalent" if a sufficiently precise description by means of customary designations is not possible. The suffix "or equivalent" may be omitted if a substantive reason justifies the product specification otherwise. Such a reason exists in particular where contracting authorities are required to procure products or processes with different characteristics from products or processes already in their possession and this would involve a disproportionate financial outlay or disproportionate difficulties in integration, use, operation or maintenance. The reasons are to be documented.

§ 24

Furnishing of proof through quality labels

(1) As proof that a performance complies with characteristics required in the tender specifications, the contracting authority may require the submission of quality labels in accordance with paragraphs (2) to (4).

(2) The quality label must fulfil all of the following conditions:

1. The label requirements shall be based on objectively verifiable and non-discriminatory criteria that are appropriate to define characteristics of the performance.
2. The label was developed in an open and transparent procedure in which all relevant stakeholders could participate.
3. The label is accessible to all undertakings concerned.
4. The label requirements were set by a third party on which the undertaking applying for the label could not exercise a decisive influence.

(3) In case the performance does not have to satisfy all label requirements the contracting authority shall indicate requirements concerned.

(4) The contracting authority must accept other quality labels if the tenderer can prove that they have equivalent performance requirements.

(5) Where an undertaking had demonstrably no possibility of obtaining the specific quality label indicated by the contracting authority or an equivalent label within the relevant time limit for reasons that are not attributable to that undertaking, the contracting authority must accept other appropriate means of proof, provided that the undertaking proves that the performance to be provided by it fulfils the requirements of the label or the specific requirements indicated by the contracting authority.

§ 25

Variant tenders

The contracting authority may authorise variant tenders for public invitations to tender and types of procurement proceeding with a competitive tender in the contract notice, otherwise in the procurement documents. Variant tenders are not authorised without such indication. Variant tenders must be related to the subject matter of the contract. When deciding on the award, the principles of transparency and equal treatment must be observed.

§ 26

Subcontracts

(1) The contracting authority may in the contract notice or the procurement documents invite undertakings, when submitting a tender, to specify the parts of the contract they intend to subcontract to third parties and, if possible, to designated subcontractors. Before awarding a contract, the contracting authority may require that tenderers whose tenders are on the shortlist specify the subcontractors and prove that these subcontractors will have at their disposal the necessary resources. Where a candidate or tenderer intends to subcontract part of the contract to a third party and at the same time rely on the capacities of such third party pursuant to section 34 (2), in such case section 35 shall also be applied.

(2) The main contractor's liability toward the contracting authority remains unaffected by paragraph (1).

(3) Section 128 (1) of the Act against Restraints of Competition applies accordingly to subcontractors at all stages.

(4) The contracting authority may require in the contract terms that the main contractor is to disclose, at the latest when the performance of the contract commences, the names, contact details and legal representatives of its subcontractors and every change at the level of the subcontractor occurring during the performance of the contract. Moreover, the notification obligations can also be extended to suppliers involved in service contracts as well as to other stages in the chain of subcontractors.

(5) If the contracting authority receives knowledge that there are compulsory grounds for exclusion of a subcontractor in accordance with section 31, the contracting authority shall require the subcontractor to be replaced. If the knowledge relates to facultative grounds for exclusion in accordance with section 31, the contracting authority may require that said subcontractor be replaced. The contracting authority shall set a deadline for the candidate or tenderer to do so. The deadline is to be calculated in such a way that the delay does not cause the contracting authority any disadvantages. If the candidate or tenderer cannot change the subcontractor within this period, the tender will be excluded.

(6) The contracting authority may require that all or certain tasks in the provision of performances be carried out directly by the contractor itself or, in the case of a consortium, by a participant of the consortium.

Subchapter 4

Publications; Transparency

§ 27

Contract notice; buyer profile

(non-official publication - no guarantee - no liability - as of: 07/02/2017)

(1) The contracting authority shall announce its intention to award a contract or to conclude a framework agreement by means of a public invitation to tender, a limited invitation to tender after a competitive tender or a negotiated award with a competitive tender in a contract notice.

(2) The contracting authority can also set up an online buyer profile. This profile contains the publication of details of planned or current procurement procedures, of awarded contracts or cancelled procurement processes and all other information relevant to award of contracts, such as the contact agency, address, e-mail address, telephone and fax number of the contracting authority.

§ 28

Publication of contract notices

(1) Contract notices shall be published on the contracting authority's website or on internet portals. In addition, contract notices may be published in daily newspapers, official publications or journals. Contract notices on the contracting authority's website or on Internet portals must be able to be determined centrally via the search function of the Internet portal www.bund.de.

(2) The contract notice must contain all the information required for a decision to participate in the procurement procedure or to tender. It contains at least:

1. the name and address of the body which invokes the tender, the contracting entity and the authority to which the tenders or requests to participate must be submitted,
2. the type of procurement procedure,
3. the form in which requests to participate or tenders shall be submitted,
4. if applicable, in the cases referred to in section 29 (3), measures to protect confidentiality and information on access to the procurement documents,
5. Type and extent of the performance as well as the place of performance,
6. if applicable, the number, size and type of each lot,
7. if applicable, the authorisation of variant tenders,
8. any provisions concerning the period of execution,
9. the electronic address under which the procurement documents can be obtained or the name and address of the body which issues the procurement documents or in which they can be consulted,
10. the participation deadline or the tender deadline and the binding deadline,
11. the amount of security required,
12. the essential terms of payment or the announcement of the documents in which they are contained;
13. the documents to be submitted with the tender or request for participation, which the contracting authority requests for the purpose of assessing the eligibility of the candidate or tenderer and the absence of grounds for exclusion, and
14. the indication of the award criteria, unless mentioned in the procurement documents.

§ 29

Provision of the tender documents

(1) In the contract notice the contracting authority shall specify an electronic address from which there is a free, unlimited, full and direct access to the procurement documents.

(2) The contracting authority can transmit the procurement documents using other suitable means, if the necessary electronic means for calling up the procurement documents

1. are not compatible with generally used ICT devices or programs, due to the particular nature of the contract award,

2. use, for describing the tenders, file formats that cannot be processed with generally available or used programs or that are protected by licences that are not free and generally available, or
 3. require the use of office equipment that is not generally available to the contracting authority.
- (3) The contracting authority shall specify in the contract notice which measures it will apply to protect the confidentiality of information and how to access the procurement documents.

§ 30

Contract award notice

(1) Following the execution of a limited invitation to tender without a competitive tender or a negotiated award without a competitive tender the contracting authority informs for a period of three months on its websites or on internet portals about each contract awarded with an order value of 25 000 euros without VAT. This notice contains at least the following information:

1. Name and address of the contracting authority and its procuring entity,
2. Name of the commissioned undertaking; in the case of a natural person, their consent must be sought or their name made anonymous,
3. Type of Procurement Procedure,
4. Type and scope of the performance,
5. Period of performance provision.

(2) The contracting authority is not obliged to publish individual details when publishing them

1. hampers law enforcement,
2. is contrary to the public interest,
3. harms the legitimate business interests of a company or
4. would undermine fair competition between companies.

Subchapter 5

Requirements for undertakings; eligibility

§ 31

Selection of qualified undertakings; Exclusion of candidates and tenderers

(1) Public contracts shall be awarded to skilled, efficient (eligible) undertakings that have not been excluded by analogous application of sections 123 or 124 of the Act against Restraints of Competition.

(2) The contracting authority shall assess checks the eligibility of the candidates or tenderers on the basis of the selection criteria defined in section 33. The selection criteria may relate to the qualification and the license to practice or the economic, financial, technical or professional capacity. In the case of exclusion reasons. Section 125 of the Act against Restraints of Competition for Self-Cleaning and section 126 of the Act against Restraints of Competition for the permissible maximum duration of the exclusion shall be applied accordingly. Section 123 (1) Numbers 4 and 5 of the Law against Restraints of Competition also apply to the extent that the offence is directed against public budgets. Section 124 (1) Number 7 of the Act against Restraints of Competition applies mutatis mutandis with the provision that the defective performance of the contract must not have led to the premature termination of the contract, nor to damages or any comparable legal consequence.

(3) In the case of types of proceedings with competitive tender, the contracting authority only invites candidates to submit a tender who have proven their eligibility and have not been excluded.

(4) In the case of a public invitation to tender, the contracting authority can decide whether to evaluate the tenders before carrying out the eligibility review.

§ 32

Legal form of undertakings and bidding consortiums

(1) Candidates or tenderers who are entitled to supply the relevant performance in accordance with the regulations of the State in which they are based must not be rejected solely because they are required to be a natural or legal person according to German regulations. However, in the case of services contracts and supply contracts that also comprise additional services, legal persons may be obliged, in their request to participate or their tender, to furnish the names and professional qualifications of the persons who will be entrusted with providing the performance.

(2) Candidate and bidding consortiums shall be treated in the same way as individual candidates and tenderers. The contracting authority may not make it a compulsory requirement for groups of undertakings to have a specific legal form in order to request participation or submit a tender. If necessary, the contracting authority can specify conditions in the procurement documents under which groups of undertakings must fulfil the selection criteria and execute the contract; these conditions must be objectively justified and proportionate.

(3) Notwithstanding Paragraph (2), the contracting authority can require a bidding consortium to adopt a particular legal form, provided this is necessary proper execution of the contract.

§ 33

Selection criteria

(1) With regard to the qualification and authorisation to pursue the professional activity, the economic and financial standing and the technical and professional ability of candidates and tenderers the contracting authority may set requirements to ensure that candidates or tenderers have the necessary eligibility for the proper performance of the contract. The requirements must be related and proportionate to the subject matter of the contract. They shall appear in the contract notice in case of public invitations to tender or types of procedure with a competitive tender, otherwise in the procurement documents.

(2) Insofar as activities subject to registration, notification or authorization are the subject of the performance, the contracting authority may at any time of the procurement procedure demand proof of qualification and permission to practice the profession.

§ 34

Reliance on the resources of other undertakings

(1) A candidate or tenderer can call upon the capacities of other undertakings to meet the requirements for a particular public contract in terms of economic, financial, technical and professional ability, provided that it proves that it actually has access to the resources required for the contract by submitting, for example, a declaration of commitment from these undertakings. This option exists, irrespective of the legal nature of the relationships between the candidate or tenderer and the other undertakings. However, a candidate or tenderer can only rely on the capacities of other undertakings, in respect of providing evidence of the required professional ability such as educational and professional qualifications or of the relevant professional experience, if said undertakings provide the performance for which these capacities are required.

(2) In conducting the eligibility review, the contracting authority reviews the undertakings offering capacities that the candidate or tenderer wishes to avail of in order to meet certain selection criteria and verifies whether criteria for exclusion apply. Section 26 (5) shall apply

accordingly. If the candidate or tenderer submits a European Single Procurement Document (ESPD) pursuant to Section 50 of the Procurement Ordinance, this must also include the information required for the review under the first sentence.

(3) Where a candidate or tenderer calls upon the capacities of another undertaking to meet the requirements in terms of economic and financial standing, the contracting authority may require the candidate or tenderer and the other undertaking to joint and several liability for the performance of the contract, to an amount commensurate with the scope of the “borrowed” capacities.

(4) Paragraphs (1) through (3) shall also apply to consortiums of candidates or tenderers.

§ 35

Proof of eligibility and of the absence of grounds for exclusion

(1) The contract notice or in the case of types of procedure without competitive tender the invitation to submit an offer shall specify, in addition to the selection criteria, which documents (self-declarations, statements, certificates and other means of proof) must be provided by candidates or tenderers as proof of their eligibility under Sections 33 and 34 and as proof of the absence of grounds for exclusion.

(2) The contracting authority shall always require the submission of self-declarations.

(3) As a preliminary proof of eligibility and of the absence of grounds for exclusion, the contracting authority may request the submission of a European Single Procurement Document under Section 50 of the Procurement Ordinance. Section 50 (1) sentence 1 and (2) sentence 1 of the Procurement Ordinance shall apply mutatis mutandis.

(4) The contracting authority may ask the candidate or tenderer to provide explanation for the documents received.

(5) If a candidate or tenderer is unable, for a legitimate reason, to provide the required documents, it may prove that it has the qualification and authorisation to pursue the professional activity or has the economic, financial, technical or professional ability by presenting other documents considered appropriate by the contracting authority.

(6) If the candidate or tenderer is registered in an official list or possesses a certificate, and these respectively meet the requirements of Article 64 of Directive 2014/24/EU, the contracting authority shall not question the documents and information in the official list or certification system without justification (presumption of eligibility). An official list that meets the requirements of Article 64 of Directive 2014/24/EU can also be compiled by Chambers of Industry and Commerce. In maintaining the official list, the Chambers of Industry and Commerce use the services of a joint body responsible for the official list.

§ 36

Limiting the number of candidates

(1) In the case all procurement procedures with a competitive tender, the contracting authority may apply a limit to the number of qualified candidates invited to submit a tender or engage in negotiations, provided there are sufficient qualified candidates. For this purpose, the contracting authority shall specify in the contract notice the objective and non-discriminatory selection criteria it intends to apply to limit the number,

the minimum number of candidates it intends to invite and where appropriate also the maximum number.

(2) The minimum number of candidates to be invited to submit tenders or to take part in negotiations must not be less than three. In any event the minimum number set must be sufficient to ensure genuine competition. If the number of eligible candidates is less than the minimum number, the contracting authority may go ahead with the procurement procedure by issuing an invitation to all candidates, that have the required eligibility, to submit a tender or to participate in negotiations. Other undertakings that have not applied to participate, or candidates that do not meet the eligibility requirements, shall not be admitted to this procedure.

Subchapter 6

Form, submission, and handling of requests to participate and tenders

§ 37

Invitation to submit a tender or to negotiations after a competitive tender

(1) If a competitive tender has been used, the contracting authority shall select all eligible, non-excluded candidates or, in accordance with Section 36, a limited number of eligible, non-excluded candidates, which it will invite to submit a tender or to participate in negotiations.

(2) The invitation provided for under paragraph 1 to submit a tender shall include at least the following:

1. a reference to the published contract notice,
2. the deadline for the receipt of the tenders, the address to which the tenders must be sent, the type of submission and the language in which the tenders must be drawn up,
3. a reference to any possible adjoining documents to be submitted, provided these are not already included in the contract notice.

§ 38

Form and transmission of requests to participate and tenders

(1) The contracting authority shall determine whether undertakings must submit their requests to participate and tenders in text form pursuant to Section 126b of the German Civil Code using electronic means in accordance with Section 7, by post, by fax or by any other suitable carriers or by combining those means. The same applies to the other communication according to Section 7.

(2) From January 1, 2019, the contracting authority accepts the submission of requests to participate and tenders in text form pursuant to Section 126b of the German Civil Code using electronic means in accordance with Section 7, even if it has determined the submission by post, fax or other suitable carriers or by combination of these means. The same applies to the other communication according to Section 7.

(3) From 1 January 2020, the contracting authority will require that the undertakings submit their requests to participate and tenders in text form pursuant to Section 126b of the German Civil Code exclusively by using electronic means in accordance with Section 7. The same applies to the other communication according to Section 7.

(4) ¹The contracting authority is not obliged to demand or accept electronically submitted requests to participate or tenders in accordance with paragraphs 2 and 3 where:

1. the estimated value of the contract, excluding VAT, does not exceed EUR 25 000 or

¹ Official footnote: The Federal Ministry for Economic Affairs and Energy will evaluate the effects of the exemptions from the comprehensive obligation to submit the applications and tenders in electronic form to the awarding process within two years after the date specified in Section 38 (3) UVgO.

2. a limited invitation to tender without a competitive tender or a negotiated award without a competitive tender is carried out.

The same applies to the other communication according to Section 7.

(5) An obligation to submit tenders using electronic means in accordance with Section 7 does not exist if one of the reasons in Section 29 (2) applies to the electronic means required for submitting the tender, or if at the same time physically or to scale models must be submitted which cannot be transmitted electronically. In these cases, communication takes place by post or other suitable carriers.

(6) If the use of electronic means is mandatory, the contracting authority shall check if the data to be transmitted entail higher security requirements. Where necessary, the contracting authority may require that request to participate and tenders are provided

1. with an advanced electronic signature in accordance with Article 3 (11) of Regulation (EU) No 910/2014 or with an advanced electronic seal referred to in Article 3 (26) of Regulation (EU) No 910/2014
2. or a qualified electronic signature in accordance with Article 3 (12) of Regulation (EU) No 910/2014 or a qualified electronic seal as referred to in Article 3 (27) of Regulation (EU) No 910/2014.

(7) The contracting authority may require tenders to be submitted using means other than electronic means, if such tenders include especially sensitive data that cannot be adequately protected through the use of generally available or alternative electronic means, or if the security of the electronic means cannot be guaranteed.

(8) Requests to participate and tenders transmitted directly or by post shall be submitted in a sealed envelope and marked as such.

(9) Requests to participate and tender transmitted directly or by post must be signed. In the case of fax submissions, a signature on the telefax template shall suffice.

(10) Changes to the procurement documents are not permitted. Requests to participate and tenders must be complete and must contain all required information, declarations and prices. Any variant tender must be identified as such.

(11) The undertakings shall specify if industrial property rights for the contract subject matter are in existence, being applied for or under consideration.

(12) Candidate or bidding consortiums must, in each of their requests to participate or tenders, list their respective members and nominate one member as an agent authorised to conclude and execute the relevant contract. If one of this information is missing, it must be submitted before the contract award.

§ 39

Storing unopened requests to participate and tenders

Requests to participate and tenders that have been electronically transmitted must be appropriately identified and stored in encrypted form. Requests to participate and tenders that have been transmitted directly or by post must be stamped, unopened, with a notice of receipt and locked away safely until the opening date. Requests to participate and tenders that have been transmitted by fax must be appropriately identified and locked away safely.

§ 40

Opening the requests to participate and tenders

(1) The contracting authority may not take note of the content of the requests to participate and tenders until after the relevant time limits have expired. This does not apply if, according to Section 12 (3), only one company was invited to submit a tender.

(2) Tenders should be jointly opened by at least two representatives of the contracting authority at an arranged time immediately after the time limit for tender has passed. Tenderers

are not admitted at this process.

Subchapter 7

Reviewing and evaluating the requests to participate and tender; contract award

§ 41

Reviewing requests to participate and tenders; follow up request for documentation

(1) The requests to participate and tenders shall be reviewed for completeness and technical accuracy; tenders shall also be reviewed for mathematical accuracy.

(2) The contracting authority may, in compliance with the principles of transparency and equal treatment, ask the candidate or tenderer to complete, send on or correct incomplete, missing or incorrect business-related documents, particularly self-declarations, statements, certificates or other forms of proof, or to complete or send on any incomplete or missing documents related to the performance. The contracting authority is entitled to state in the contract notice or the procurement documents that he will not follow up with requests for documents.

(3) Follow-up requests for performance-related documents concerning the economic evaluation of tenders using the award criteria are excluded. This shall not apply to pricing, provided only non-essential individual entries are involved, the individual prices of which do not change the overall price or adversely affect the evaluation sequence and the competition.

(4) Following the contracting authority's request, the documents shall be submitted by the candidate or tenderer within a reasonable time limit to be set by the contracting authority according to a calendar date.

(5) The decision to follow up with requests for documents and the result thereof shall be documented.

§ 42

Exclusion of requests to participate and tenders

(1) Tenders from undertakings that do not meet the selection criteria in accordance with Section 31 or that have been excluded due to the existence of exclusion grounds are not taken into account in the evaluation. In addition, tenders are excluded from the evaluation that do not meet the requirements of Section 38, in particular

1. Tenders that were received late or not in proper form, unless this occurred for reasons not attributable to the tenderer,
2. Tenders that do not include the documents requested initially or by follow-up request
3. Tenders in which tenderer's changes to their own data entries are questionable,
4. Tenders in which changes or additions have been made to the procurement documents,
5. Tenders that do not contain the required pricing information, unless only non-essential individual entries are involved, the individual prices of which do not change the overall price or adversely affect the evaluation sequence and the competition, or,
6. Variant tenders that are not admitted to this process.

(2) If the contracting authority has admitted variant tenders and has specified minimum requirements for this, it shall only consider those variant tenders that meet its prescribed minimum requirements.

(3) Paragraph 1 shall apply mutatis mutandis to the review of requests to participate.

§ 43

Contract award and award criteria

(1) The contract shall be awarded to the most economically advantageous tender.

(non-official publication - no guarantee - no liability - as of: 07/02/2017)

(2) The most economical advantageous tender shall be determined on the basis of the tender offering the best price-quality ratio. Apart from the price or costs, the award decision may also take into account qualitative, environmental or social criteria, particularly:

1. quality, including technical merit, aesthetic and functional characteristics, accessibility of the performance, especially for people with disabilities, compliance with "Design for all" requirements, social, environmental and innovative characteristics, as well as sales and trading conditions;
2. organisation, qualification and experience of staff entrusted with performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract, or
3. availability of after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion.

The contracting authority may also specify fixed prices or fixed costs, with the result that the most economically advantageous tender shall then only be determined on the basis of qualitative, environmental or social award criteria, according to sentence 2.

(3) The award criteria must be related to the subject matter of the contract. This relationship shall also be assumed when an award criterion refers to processes relating to the production, provision or disposal of the performance, to trading with the performance or to another stage in the life cycle of the performance, even when such factors do not affect material qualities of the subject matter of the contract.

(4) The contracting authority may determine that the award criterion 'costs' is calculated on the basis of the life cycle cost of the performance in accordance with Section 59 of the Procurement Ordinance.

(5) The award criteria must be specified and defined in a manner that ensures the possibility of effective competition, that the contract cannot be awarded arbitrarily and that it is possible to conduct an effective review on whether and to what extent the tenders meet the award criteria.

(6) The contracting authority shall indicate, in the contract notice or procurement documents, the relevant weighting that it assigns to the individual award criteria in order to determine the most economically advantageous tender. This weighting may also be expressed in the form of a range, with an appropriate maximum spread. Where weighting is not possible for objective reasons, the contracting authority shall indicate the award criteria in descending order of importance.

(7) As regards proof of whether and to what extent the tendered performance meets the required award criteria, Section 24 shall apply accordingly.

(8) In general, at least two representatives of the contracting authority shall take part in the decision to award a contract.

§ 44

Abnormally low tenders

(1) Where the price or costs of a tender to which the contract is to be awarded appears to be abnormally low in relation to the performance to be provided, the contracting authority shall seek clarification from the tenderer.

(2) The contracting authority shall review the constituent elements of the tender and consider the transmitted documents. The review may in particular apply to:

1. the economics of the manufacturing process of a supply or a service provided,
2. the technical solutions chosen or any exceptionally favourable conditions available to the undertaking for the supply of the products or for the execution of the services,
3. the particularities of the performance proposed,
4. compliance with obligations referred to in Section 128 (1) of the Act against Restrictions of Competition, in particular any environmental, social and labour regulations applicable to the undertaking; or

5. any state aid granted to the undertaking.

(3) If, following the review under paragraphs (1) and (2), the contracting authority is unable to establish a satisfactory explanation for the low price or costs tendered, it may refuse to award the contract to this tender. The contracting authority shall reject the tender if it has established that the price or costs of the tender are abnormally low because of a failure to comply with obligations under paragraph (2) second sentence number 4. The contracting authority shall also reject the tender if the tenderer does not participate in the review under paragraphs (1) and (2).

(4) Where the contracting authority establishes that a tender is abnormally low because the tenderer has obtained state aid, the contracting authority shall reject the tender if the tenderer is unable to prove, within a certain time limit, that the aid in question was lawfully granted.

§ 45

Contract performance

(1) For the performance of public contracts Section 128 (1) of the Act against Restraints of Competition shall apply accordingly.

(2) Contracting authorities may set special conditions for the performance of a contract provided that they are related to the subject matter of the contract in analogous application of Section 127 (3) of the Law against Restraints of Competition. The contract performance conditions must arise from the contract notice or the procurement documents. They may in particular include economic, innovation-related, environmental, social or employment-related considerations or the protection of information confidentiality.

(3) For proof that the performance offered complies with the required contract performance conditions, Section 24 shall apply accordingly.

§ 46

Informing candidates and tenderers

(1) The contracting authority shall promptly inform each candidate and tenderer about the conclusion of a framework agreement or the award of the contract. The same shall apply to the cancellation or re-initiating of a procurement procedure, including the reasons for this decision. The contracting authority shall inform, on request by the candidate or tenderer, without undue delay and in any event within 15 days after receipt of the request, the unsuccessful tenderers of the main reasons for the rejecting of their tenders, the characteristics and advantages of the successful tender and the name of the successful tenderer, and the candidates not selected about the main reasons for the non-selection.

(2) Section 30 (2) shall apply mutatis mutandis to information pursuant to paragraph (1) sentence 3.

§ 47

Modification of contracts

(1) For the modification of a public supply or service contract without conducting of a new procurement procedure, Section 132 (1), (2) and (4) of the Act against Restraints of Competition apply mutatis mutandis.

(2) In addition, it is permissible to modify a public contract without conducting a new procurement procedure if the overall nature of the contract is not altered and the value of the modification does not amount to more than 20% of the original contract value. Where there are several successive modifications, the total value of the modifications is applicable.

§ 48

Cancellation of procurement procedures

(1) The contracting authority is entitled to cancel a procurement procedure entirely or in part, where:

(non-official publication - no guarantee - no liability - as of: 07/02/2017)

1. no request to participate or tender that fulfils the conditions has been received ,
2. the basis of the procurement procedure has materially changed,
3. no economically advantageous result has been achieved or
4. other serious reasons exist.

(2) Furthermore, the contracting authority is not obliged to award the contract.

Chapter 3

Awarding contracts for special services; design contests

§ 49

Awarding of contracts for social and other special services

(1) In deviation from Section 8 (2), the contracting authority can opt to use a negotiated award procedure with a competitive tender to award contracts for social and other special services within the meaning of Section 130 (1) of the Act against Restraints of Competition in addition to a Public invitation to tender or a Limited invitation to tender with a competitive tender. In cases where the conditions of Section 8 (3) or (4) are met, the contracting authority may waive a competitive tender. For social and other special services provided as part of a self-employed service or offered in competition with self-employed professionals, Section 50 applies.

(2) In evaluating the criteria listed in Section 43 (2) first sentence number 2, the contracting authority may take into account the success and quality of services already provided by the tenderer or by the staff assigned by the tenderer. For services under the German Social Code II and III, the contracting authority may take into account the following to evaluate the success and quality already provided by the tenderer, in particular:

1. integration rates,
2. drop-out rates,
3. educational qualifications attained and
4. assessment of contract performance, using transparent and non-discriminatory methods.

§ 50

Special regulation for the award of self-employed services

Public contracts for services provided as part of a self-employed activity or offered in competition with self-employed professionals² are in general to be awarded in a competitive procedure. There is to be as much competition as is possible according to the nature of the business or the particular circumstances.

§ 51

Awarding of defence or security specific contracts

² cf. § 18 (1) (1) EStG:

Income from self-employment is: 1. Income from freelance work. Freelance work includes self-employed scientific, artistic, literary, teaching or educational activities, self-employment of doctors, dentists, veterinarians, lawyers, notaries, patent attorneys, surveyors, engineers, architects, trade chemists, accountants, tax consultants, advisory services such as economists and business administrators, sworn auditors (certified book reviewers), tax representatives, non-medical practitioners, dentists, physiotherapists, journalists, image reporters, interpreters, translators, pilots and similar professions. A member of a freelance profession within the meaning of sentences 1 and 2 is also self-employed if he uses the assistance of skilled workers; The prerequisite is that he / she becomes active on the basis of his / her own specialist knowledge in a responsible and responsible manner. Representation in the case of temporary prevention does not preclude the assumption of a managerial and self-reliant activity;

(1) In deviation from Section 8 (2), the contracting authority is entitled to award defence or security specific contracts within the meaning of Section 104 of the Law against Restraints of Competition through a the Limited Invitation to tender with or without a competitive tender or through a negotiated award with or without a competitive tender.

(2) In case of a defence or security specific contract within the meaning of Section 104 (1) to (3) of the Act against Restraints of Competition, Section 7 of the Procurement Ordinance on Defence and Security applies accordingly.

(3) Contracting authorities shall specify their requirements for security of supply in the contract notice or the procurement documents. In particular, contracting authorities may request that the request to participate or the tender contain the information listed in Section 8 (2) of the Procurement Ordinance on Defence and Security.

(4) Section 31 (1) applies to defence or security specific contracts with the proviso that in analogous application of Section 124 (1) of the Act against Restraints of Competition an undertaking can be excluded from participating in a procurement procedure, even if the undertaking does not have the required trustworthiness, to rule out risks to national security. Evidence that risks to national security cannot be ruled out can also be provided by using protected data sources.

§ 52

Conducting design contests

Design contests can be conducted in particular in the fields of spatial planning, urban planning and construction or data processing.

Chapter 4

Final provisions

§ 53

Awarding abroad

Foreign agencies or domestic departments in the cases of Section 8 (4) Number 17 second part of the sentence are, when awarding supply and service contracts abroad, not obliged to follow Section 28 (1) Sentences 1 and 3, Section 29 (1), Section 30 and Section 38 (2) to (4) of these Rules of Procedure.

§ 54

Determination and calculation deadlines

- (1) The contracting authority shall set deadlines that are determined according to calendar days.
- (2) For the calculation of the deadlines laid down in these Rules of Procedure, Sections 186 to 193 of the Civil Code apply.