

VOB Part A 2019
General provisions for the award of construction services

Section 1
The basic paragraph

§ 1
Construction services

Construction services are works of any kind by which a structural facility is constructed, maintained, altered or removed.

§ 2
Principles

(1) Construction services are awarded in competition and by means of transparent procedures. In doing so, the principles of efficiency and proportionality are observed. Restrictive and unfair practices must be combated.

(2) No company may be discriminated against when awarding construction services.

(3) Construction services are awarded to competent, efficient and reliable companies at reasonable prices.

(4) Contracting authorities, applicants, bidders and contractors shall maintain the confidentiality of all information and documents in accordance with these Public Procurement Regulations or other legal provisions.

(5) The implementation of procurement procedures for the purpose of market exploration is not permitted.

(6) The contracting authority shall not issue a tender until all tender documents have been completed and when execution can begin within the specified deadlines.

(7) The aim is to award the contracts in such a way that year-round construction activity is promoted.

§ 3
Types of allocation

Construction services are awarded on the basis of public tendering, restricted tendering with or without participation competition or on the basis of direct award.

1.

In the case of public tendering, construction services are awarded in the prescribed procedure after a public invitation to an unlimited number of companies to submit bids.

2.

In the case of restricted tenders (restricted tenders with or without competition), construction services are awarded in accordance with the prescribed procedure after a limited number of companies have been invited to submit tenders.

3.

In the case of direct awards, construction services are awarded in a simplified procedure.

§ 3a

Admissibility requirements

(1) The contracting authority has at its choice the public tender and the restricted tender with participation competition. The other types of proceedings shall be available only to the extent permitted by paragraphs two and three.

(2) Restricted tendering without participation competition can take place,

1.

up to the following contract value of the construction work excluding VAT¹:

a)

50,000 euros for finishing trades (excluding energy and building technology), landscaping and road equipment,

b)

150,000 euros for civil engineering, traffic infrastructure and civil engineering,

c)

100,000 euros for all other trades,

2.

if a public tender or a restricted tender with a competitive bidding process has not had an acceptable result,

3.

if the public tender or a restricted tender with a competitive bidding process is inexpedient for other reasons (e.g. urgency, confidentiality).

(3) Direct award is permissible if the public tender or restricted tenders are inexpedient, in particular,

1.

if only a specific company is eligible for the benefit for special reasons (e.g. patent protection, special experience or equipment),

2.

if the benefit is particularly urgent,

3.

if the nature and scope of the service cannot be determined so clearly and exhaustively before the award of the contract that sufficiently comparable tenders can be expected,

4.

if, after the cancellation of a public tender or restricted tender, a new tender does not promise an acceptable result,

5.

if it is necessary for reasons of confidentiality,

6.

if a small service cannot be separated from a larger service awarded without disadvantage.

In addition, direct awards can be made without VAT up to a contract value of EUR 10,000².

(4) Construction services up to an expected contract value of EUR 3,000 excluding VAT can be procured without the implementation of an award procedure, taking into account the budgetary principles of efficiency and economy (direct contract). The client is to switch between the contracted companies.

§ 3b

Procedure

(1) In a public tender, the contracting authority publicly invites an unlimited number of companies to submit bids. Any interested company can submit a bid.

(2) In the case of a restricted tender with a participation competition, the selection of the companies that are invited to submit bids is made by evaluating the participation competition. To this end, the contracting authority publicly invites an unlimited number of companies to submit applications to participate. Candidates will be selected on the basis of the eligibility criteria set by the contracting authority. The transparent, objective and non-discriminatory selection criteria for limiting the number of candidates, the minimum number and, where applicable, the maximum number of candidates to be invited shall be indicated by the contracting authority in the contract notice of the competition.

The minimum number of candidates to be invited must not be less than five. If the number of suitable candidates is below the minimum number, the contracting authority may continue the procedure with the suitable candidate(s).

(3) In the case of a restricted invitation to tender without a participation competition, several, generally at least three, suitable companies should be invited.

(4) In the case of a restricted invitation to tender without a participation competition, several, generally at least three, suitable companies should be invited.

§ 4
Types of contracts

(1) Construction services are to be awarded in such a way that the remuneration is calculated according to performance (service contract), namely:

1.

as a rule, at unit prices for technically and economically uniform partial services, the quantity of which must be specified by the Client in the contract documents in terms of dimensions, weight or number of units (unit price contract),

2.

in suitable cases, for a lump sum if the service is precisely determined in terms of the type of performance and scope and a change in the execution is not to be expected (lump sum contract).

(2) By way of derogation from subsection (1), construction services of a lesser scope which mainly entail wage costs may be awarded on an hourly basis (hourly wage contract).

(3) The tender procedure shall be based on the fact that the tenderer must include the prices he demands for his services in the tender specifications or indicate them in some other way in the tender.

(4) The bidding and rebidding procedure, in which prices quoted by the contracting authority are subject to the bidders' bidding up and down, is to be applied only in exceptional cases in the case of regularly recurring maintenance work, the scope of which is to be limited as far as possible.

§ 4a
Framework agreements

(1) Framework agreements are contracts which one or more contracting entities may award to one or more undertakings in order to determine the conditions for individual contracts to be awarded during a given period, in particular the price envisaged. The envisaged contract volume must be determined and announced as precisely as possible, but does not have to be conclusively determined. A framework agreement shall not be abusive or applied in such a way as to impede, restrict or distort competition. The duration of a framework agreement may not exceed four years, unless there is an exceptional case based on the subject matter of the framework agreement.

(2) Individual contracts may only be awarded between contracting entities which have declared their expected requirements for the award procedure and undertakings with which framework agreements have been concluded.

§ 5

Allocation by lots, Uniform allocation

- (1) Construction services shall be awarded in such a way that uniform execution and unambiguous comprehensive liability for claims for defects are achieved; they are therefore to be awarded as a rule with the supplies belonging to the service.
- (2) Construction services are to be divided in quantity (partial lots) and awarded separately according to type or subject area (specialist lots). For economic or technical reasons, there may be no division or separation in the awarding of the contract.

§ 6 Participants in the competition

- (1) Competition shall not be limited to undertakings established in certain regions or places.
- (2) Bidding consortia shall be treated in the same way as individual bidders if they carry out the work in their own business or in the businesses of the members.
- (3) Only undertakings which are commercially engaged in the performance of services of the type put out to tender may participate in the competition.

§ 6a Proof of suitability

- (1) In order to prove their suitability, the expertise, performance and reliability of the applicants or tenderers shall be examined. When assessing reliability, self-cleaning measures are taken into account in the corresponding application of § 6f EU subsections 1 and 2.
- (2) The proof shall include the following information:
 1.
the turnover of the undertaking in each case in relation to the last three completed financial years, insofar as it relates to construction services and other services comparable to the service to be awarded, including the share in the case of contracts carried out jointly with other undertakings,
 2.
the performance of services in the last up to five completed calendar years that are comparable to the service to be awarded. In order to ensure sufficient competition, the contracting authority may point out that relevant construction work carried out more than five years ago will also be taken into account,
 3.
the number of employees employed on an annual average in the last three completed calendar years, broken down by wage groups with separately designated technical management personnel,

4.

entry in the professional register of their registered office or place of residence,
as well as information,

5.

whether insolvency proceedings or comparable statutory proceedings have been opened or an application has been made for the opening of insolvency proceedings, or whether the application has been rejected for lack of assets or an insolvency plan has been legally confirmed,

6.

whether the company is in liquidation,

7.

that it can be proven that no serious misconduct has been committed that would call into question the reliability of the applicant or tenderer,

8.

that the obligation to pay taxes and duties as well as social security contributions has been duly fulfilled,

9.

that the company has registered with the employers' liability insurance association.

(3) Other additional information relating to the specific assignment, in particular suitable for the examination of specialist knowledge, may be requested.

(4) The contracting authority shall admit other evidence of economic and financial standing that it deems suitable if it determines that there are valid reasons for doing so.

(5) The contracting authority may dispense with information pursuant to subsection 2 numbers 1 to 3, 5 and 6 up to a contract value of EUR 10,000 if this is justified by the nature and scope of the contract.

§ 6b Means of Providing Evidence, Procedure

(1) Proof of suitability can be provided by means of an entry in the generally accessible list of the Association for the Prequalification of Construction Companies (Prequalification Directory), which can be accessed directly by the client.

(2) The applicants or tenderers may also provide the information by means of individual references. The client may provide that self-declarations are sufficient for individual information. Self-declarations, which serve as provisional evidence, must be confirmed by the shortlisted tenderers or by the eligible candidates by means of appropriate certificates from the competent authorities.

(3) The contracting authority shall waive the submission of evidence if the authority awarding the contract is already in possession of such evidence.

(4) In the case of a public invitation to tender, the invitation to tender shall specify the evidence the submission of which is required with the tender or the subsequent request for which is reserved. In the case of a restricted tender with a participation competition, it must be required that the self-declarations or evidence be submitted with the application for participation.

(5) In the case of restricted tendering and direct award, the suitability of the undertakings shall be examined before the invitation to tender is issued. In doing so, the companies whose suitability offers the security necessary for the fulfilment of the contractual obligations must be selected; this means that they have the necessary expertise, performance and reliability and have sufficient technical and economic resources.

(5) In the case of restricted tendering and direct award, the suitability of the undertakings shall be examined before the invitation to tender is issued. In doing so, the companies whose suitability offers the security necessary for the fulfilment of the contractual obligations must be selected; this means that they have the necessary expertise, performance and reliability and have sufficient technical and economic resources.

§ 7 Description of services

(1)

1.

The service must be described unambiguously and so exhaustively that all companies must understand the description in the same sense and can calculate their prices safely and without extensive preparatory work.

2.

In order to enable a flawless price determination, all circumstances influencing it must be determined and stated in the tender documents.

3.

The Contractor may not be burdened with an unusual risk for circumstances and events over which he has no influence and the impact of which he cannot estimate in advance on prices and deadlines.

4.

Requirement items are generally not to be included in the service description. Attached hourly wage work may only be included in the service description to the extent absolutely necessary.

5.

If necessary, the purpose and the intended use of the finished service must also be stated.

6.

The conditions of the construction site that are essential for the performance of the service, e.g. soil and water conditions, must be described in such a way that the company can adequately assess their effects on the structural system and the execution of the construction.

7.

The "Notes for the preparation of the service description" in Section 0 of the General Technical Contract Conditions for Construction Services, DIN 18299 et seq., must be observed.

(2) Technical specifications shall not refer to a specific production or provenance or process characterising the products provided by a particular undertaking, or to trademarks, patents, types or a particular origin or production, unless:

1.

this is justified by the subject matter of the contract or

2.

the subject matter of the contract cannot be described with sufficient precision and in a generally understandable manner; such references shall be accompanied by the addition "or equivalent".

(3) When describing the service, the customary designations shall be observed.

§ 7a Technical Specifications

(1) The technical requirements (specifications – see Annex TS, point 1) for the subject matter of the contract must be equally accessible to all undertakings.

(2) The technical specifications shall be formulated in the tender documents:

1.

either by reference to the technical specifications defined in Annex TS in order of precedence

a)

national standards implementing European standards;

b)

European technical assessments,

c)

common technical specifications,

d)

international standards and other technical reference systems developed by the European standardisation bodies, or

e)

in the absence of such standards and specifications, national standards, national technical approvals or national technical specifications for the design, calculation and execution of works and the use of products.

Each reference shall be accompanied by the addition "or equivalent";

2.

or in the form of performance or functional requirements which must be sufficiently precise to give undertakings a clear picture of the subject matter of the contract and to enable the contracting authority to award the contract;

3.

or in combination of numbers 1 and 2, i.e.

a)

in the form of performance or functional requirements by reference to the specifications referred to in point 1 as a means of presuming conformity with those performance or functional requirements;

b)

or by reference to the specifications referred to in point 1 in respect of certain characteristics and by reference to the performance or functional requirements referred to in point 2 in respect of other characteristics.

(3) Where the contracting authority refers in the tender specifications to the specifications referred to in paragraph 2(1), it may not reject a tender on the ground that the service offered does not correspond to the specifications used, provided that the tenderer demonstrates in its tender to the contracting authority that the solutions proposed by it meet the requirements of the technical specification to which reference has been made: equally. A technical description from the manufacturer or a test report from a recognised body may be considered a suitable means.

(4) Where the contracting entity specifies the technical specifications in the form of performance or functional requirements, it shall not reject a tender which complies with a national standard transposing a European standard or a European technical assessment, a common technical specification, an international standard or a technical reference system drawn up by the European standardisation bodies; if these specifications relate to the required performance or functional requirements. In its bid, the bidder must prove to the contracting authority by suitable means that the respective service in accordance with the standard meets the performance or functional requirements of the contracting authority. A technical description from the manufacturer or a test report from a recognised body may be considered a suitable means.

(5) If the contracting authority prescribes environmental characteristics in the form of performance or functional requirements, it may use the specifications defined in European, multinational or other eco-labels if:

1.

they are suitable for defining the characteristics of the subject matter of the contract,

2.

the requirements of the Ecolabel are developed on the basis of scientifically substantiated information,

3.

the eco-labels are adopted through a process in which interested parties, such as public authorities, consumers, manufacturers, distributors and environmental organisations, can participate, and

4.

if the Ecolabel is accessible and available to all stakeholders.

The contracting authority may state in the tender documents that services bearing an ecolabel are presumed to meet the technical specifications set out in the tender specifications. However, the client must also accept any other suitable evidence, such as technical documents from the manufacturer or test reports from recognised bodies. Recognised bodies are the testing and calibration laboratories as well as the inspection and certification bodies that comply with the applicable European standards. The contracting authority shall recognise certificates issued by recognised bodies established in other Member States.

§ 7b Description of services with list of services

(1) As a rule, the service shall be described by a general description of the construction task (building description) and a list of services divided into partial services.

(2) If necessary, the service shall also be represented in drawings or by means of test specimens or explained in another way, e.g. by references to similar services, by quantity or static calculations. Drawings and samples that are to be decisive for the execution must be clearly identified.

(3) Services which are part of the required service according to the terms and conditions of the contract, the technical terms of the contract or commercial custom (§ 2 (1) VOB/B) do not need to be specifically listed.

(4) In the list of services, the service shall be broken down in such a way that only those services are included under an ordinal number (item) which are to be regarded as similar in terms of their technical characteristics and for the purpose of pricing. Dissimilar services are to be combined under an atomic number (collective item) only if one partial service has no significant influence on the formation of an average price compared to another.

§ 7c Description of services with service programme

(1) If, after weighing up all the circumstances, it is expedient, by way of derogation from Section 7b (1), to submit the design for the service to the competition together with the execution of the construction in order to determine the best technically, economically and creatively as well as the most functionally appropriate solution for the construction task, the service may be represented by a service programme.

(2)

1.

The service programme shall include a description of the construction task, from which the undertakings shall be able to identify all the conditions and circumstances relevant to the preparation of the design and its tender, and in which both the purpose of the finished service and the technical, economic, design and functional requirements placed on it shall be indicated, as well as, where appropriate, a model list of services, in which the quantities are wholly or partially left open.

2.

Section 7b (2) to (4) shall apply mutatis mutandis.

(3) The tenderer shall be required to submit an offer which, in addition to the execution of the service, shall include the design together with a detailed explanation and a description of the construction work as well as a detailed and appropriately structured description of the service – if necessary with quantities and prices for parts of the service. If the service is described with quantities and prices, the tenderer must be required to

1.

the completeness of its information, in particular the quantities determined by itself, either without restriction or within the framework of a quantity tolerance to be specified in the tender documents, and that it

2.

any assumptions that it is forced to make in special cases because at the time of submission of the tender individual partial services cannot yet be determined in terms of type and quantity (e.g. excavation, demolition or dewatering work) – if necessary on the basis of plans and quantity determinations.

§ 8 Procurement documents

(1) The tender documents shall consist of:

1.

the cover letter (invitation to submit an offer in accordance with subsection 2 nos. 1 to 3), if applicable, conditions of participation (subsection 2 no. 6) and

2.

the contract documents (§§ 7 to 7c and 8a).

(2)

1.

The cover letter must contain all the information referred to in Paragraph 12(1)(2) which, apart from the contract documents, is necessary for the decision to submit a tender, unless it has already been published.

2.

In the tender documents, the contracting authority may request the tenderers to indicate in their tender the services which they intend to award to subcontractors.

3.

The contracting authority must state:

a)

whether it does not allow ancillary offers,

b)

whether it admits ancillary offers only in connection with a main offer by way of exception.

The award criteria shall be defined in such a way that they are applicable to both main tenders and ancillary tenders. It is also permissible that the price is the only award criterion.

Bidders who offer a service the execution of which is not regulated in the General Technical Terms and Conditions or in the tender documents must be required in the tender to provide appropriate information on the execution and quality of this service.

4.

The contracting authority may state in the tender documents that it does not permit the submission of several main tenders.

5.

The contracting authority must conclusively specify all documents within the meaning of Section 16a (1) with the exception of product information at a central point in the tender documents.

6.

Contracting authorities who are constantly awarding construction services should summarise the requirements that the companies must comply with when processing their bids in the conditions of participation and attach them to the cover letter.

§ 8a General, Special and Additional Terms and Conditions of Contract

(1) The tender documents shall stipulate that the General Terms and Conditions of Contract for the Execution of Construction Services (VOB/B) and the General Technical Terms and Conditions of Contract for Construction Services (VOB/C) shall become part of the contract. This also applies to any Additional Terms and Conditions of Contract and any Additional Technical Terms and Conditions of the Contract, insofar as they are to become part of the Agreement.

(2)

1.

The General Terms and Conditions of Contract remain unchanged in principle. They may be supplemented by additional contractual conditions by contracting authorities who regularly award construction services for the general conditions prevailing in their case. These must not contradict the General Terms and Conditions of Contract.

2.

For the requirements of the individual case, the General Terms and Conditions of Contract and any Additional Terms and Conditions of Contract shall be supplemented by Special Terms and Conditions. In these, deviations from the General Terms and Conditions of Contract are to be limited to cases in which special agreements are expressly provided for therein and only to the extent required by the specific nature of the service and its execution.

(3) The General Technical Terms and Conditions of Contract shall remain unchanged in principle. They may be supplemented by Additional Technical Contract Terms and Conditions by contracting

authorities who are constantly awarding construction services for the conditions generally prevailing in their case. For the requirements of the individual case, additions and changes must be specified in the service description.

(4)

1.

The Additional Terms and Conditions of Contract or the Special Conditions of Contract shall regulate, where necessary, the following:

a)

documents (§ 8b (3); § 3 (5) and (6) VOB/B),

b)

Use of storage and work areas, access roads, sidings, water and energy connections (§ 4 paragraph 4 VOB/B),

c)

subcontracting to subcontractors (Section 4 (8) VOB/B),

d)

Execution deadlines (§ 9; § 5 VOB/B),

e)

Liability (Section 10 (2) VOB/B),

f)

contractual penalties and acceleration payments (§ 9a; § 11 VOB/B),

g)

Acceptance (§ 12 VOB/B),

h)

Type of contract (§§ 4, 4a), Billing (§ 14 VOB/B),

i)

Hourly wage work (§ 15 VOB/B),

j)

Payments, advance payments (§ 16 VOB/B),

k)

Provision of security (§ 9c; § 17 VOB/B),

l)

Place of jurisdiction (Section 18 (1) VOB/B),

m)

non-wage and non-salary costs,

n)

Amendment of contract prices (§ 9d).

2.

Special agreements required in individual cases on the claims for defects and their statute of limitations (§ 9b; § 13 (1), (4) and (7) VOB/B) and on the distribution of the risk in the event of damage that may occur due to flooding, storm surges, groundwater, wind, snow, ice and the like (§ 7 VOB/B) must be made in the Special Terms and Conditions. If the same conditions within the meaning of Section 9b are met for certain construction services, the special agreements may also be provided for in Additional Technical Contract Conditions.

§ 8b Rules on Costs and Confidence, Arbitration Proceedings

(1)

1.

In the case of a public tender, reimbursement of the costs for the reproduction of the specifications and other documents as well as for the costs of postal dispatch may be claimed.

2.

In the case of restricted tendering and direct award, all documents must be submitted free of charge.

(2)

1.

No compensation will be granted for the processing of the offer. However, if the contracting authority requires the tenderer to prepare drafts, plans, drawings, static calculations, quantity calculations or other documents, in particular in the cases referred to in Paragraph 7c, appropriate compensation shall be determined uniformly for all tenderers in the invitation to tender. This compensation is due to every bidder who has submitted a bid in accordance with the invitation to tender with the required documents in good time.

2.

These principles apply mutatis mutandis to direct award.

(3) The contracting authority may use tender documents and a tenderer's own proposals contained in the tenders only for the examination and evaluation of the tenders (Sections 16c and 16d). Any use beyond this period requires prior written agreement.

(4) If disputes arising from the contract are to be settled in arbitration proceedings to the exclusion of ordinary legal recourse, it shall be agreed in a special document relating only to the arbitration proceedings, unless Section 1031 (2) of the Code of Civil Procedure (ZPO) also permits another form of agreement.

§ 9 Execution Periods, Individual Deadlines, Delay

(1)

1.

The execution deadlines must be sufficient; The season, working conditions and any particular difficulties must be taken into account. The contractor must be given sufficient time to prepare for construction.

2.

Exceptionally short deadlines are to be provided for only in cases of particular urgency.

3.

If it is to be agreed that execution is not to begin until requested (Section 5 (2) VOB/B), the period within which the request can be issued must be reasonable, taking into account the circumstances governing the execution; it shall be specified in the tender documents.

(2)

1.

If it requires a considerable interest on the part of the client, individual deadlines must be determined for self-contained parts of the service.

2.

If a construction schedule is drawn up so that the services of all companies are safely intertwined, only the individual deadlines that are particularly important for the progress of the overall work should be designated as contractually binding deadlines (contractual deadlines).

(3) If the handing over of drawings or other documents is important for compliance with execution deadlines, a deadline shall also be set for this.

(4) The Client may provide for a lump sum calculation of the damage caused by default (Section 5 (4) VOB/B) in the contract documents; it should not exceed five percent of the contract amount. Proof of lesser damage must be admitted.

§ 9a Contractual penalties, acceleration remuneration

Contractual penalties for exceeding contractual deadlines are only to be agreed if the exceeding can cause significant disadvantages. The penalty shall be kept within reasonable limits. Acceleration payments (premiums) are only to be provided if completion before the expiry of the contract deadlines brings significant advantages.

§ 9b Limitation of Claims for Defects

Limitation periods other than those under Section 13 (4) VOB/B are to be provided for only if this is necessary due to the nature of the service. In such cases, all circumstances must be weighed against each other, in particular when any defects are likely to become recognizable and to what extent the causes of the defects can still be proven, but also the effect on prices and the need for an equitable assessment of the limitation periods for defect claims.

§ 9c Provision of security

(1) The provision of security shall be waived in whole or in part if defects in the performance are unlikely to occur. If the contract sum is less than 250,000 euros excluding VAT, the provision of security for the performance of the contract and, as a rule, the provision of security for the claims for defects must be waived. In the case of restricted tendering as well as in the case of direct awards, security deposits should generally not be required.

(2) The security shall not be assessed higher and its return shall not be provided for a later date than is necessary to protect the Client from damage. The security for the fulfilment of all obligations under the contract should not exceed five percent of the contract amount. The security for claims for defects should not exceed three percent of the settlement amount.

§ 9d Amendment of remuneration

Sind wesentliche Änderungen der Preisermittlungsgrundlagen zu erwarten, deren Eintritt oder Ausmaß ungewiss ist, so kann eine angemessene Änderung der Vergütung in den Vertragsunterlagen vorgesehen werden. Die Einzelheiten der Preisänderungen sind festzulegen.

§ 10

Offer, application, commitment deadlines

(1) A sufficient tender period shall be provided for the processing and submission of tenders, even in cases of urgency not less than ten calendar days. In particular, the additional effort for visiting construction sites or obtaining documents for the processing of bids must be taken into account.

(2) Bids in text form may be withdrawn until the expiry of the tender period.

(3) A sufficient application deadline shall be provided for the submission of applications to participate in the case of a restricted invitation to tender with a participation competition.

(4) The contracting authority shall determine a reasonable period within which the tenderers are bound by their bids (binding period). This should be as short as possible and not longer than the contracting authority needs for a speedy examination and evaluation of the bids (§§ 16 to 16d). A longer binding period than 30 calendar days is to be determined only in justified cases. The end of the binding period shall be indicated by indicating the calendar day.

(5) The binding period shall commence on the expiry of the tender period.

(6) Subsections (4) and (5) shall apply mutatis mutandis in the case of direct award.

§ 11

Principles of information transmission

(1) The contracting authority shall specify in the contract notice or the tender documents the method by which the communication is to take place. In the case of electronic communication, subsections 2 to 6 and § 11a shall apply. Oral communication is permissible in each case if it does not concern the procurement documents, the applications to participate or the bids and if it is sufficiently documented in an appropriate manner.

(2) Procurement documents shall be made available electronically.

(3) In the contract notice, the contracting authority shall indicate an electronic address at which the tender documents may be accessed free of charge, without restriction, in full and directly. Paragraph 7 shall remain unaffected.

(4) The undertakings shall submit their offers and applications to participate in text form by electronic means.

(5) The contracting authority shall examine on a case-by-case basis whether the data to be transmitted place increased security requirements. Insofar as it is necessary, the contracting authority may require that offers and applications for participation be accompanied by

1.

an advanced electronic signature,

2.

a qualified electronic signature,

3.

an advanced electronic seal, or

4.

a qualified electronic seal.

(6) The Client may require each company to provide a unique company name and an electronic address (registration). The contracting authority may not require registration for access to the contract notice and the tender documents. Voluntary registration is permitted.

(7) If the procurement documents contain data worthy of protection, the contracting authority may apply measures to protect the confidentiality of the information. The contracting authority may make access to the procurement documents dependent in particular on the submission of a confidentiality agreement. The measures shall be specified in the contract notice.

§ 11a

Requirements for electronic means

(1) Electronic means and their technical characteristics must be widely available, non-discriminatory and compatible with commonly used information and communication technology equipment and programs. They must not restrict companies' access to the procurement procedure. The Client shall ensure that the electronic resources are designed to be barrier-free in accordance with §§ 4, 12a and 12b of the Disability Equality Act of 27 April 2002 (Federal Law Gazette I pp. 1467, 1468) in the applicable version.

(2) For the sending, receiving, forwarding and storing of data in a procurement procedure, the contracting authority shall use only such electronic means as guarantee the integrity, confidentiality and authenticity of the data.

(3) The contracting authority shall provide undertakings with all necessary information on:

1.
the electronic means used in a procurement procedure,
2.
the technical parameters for the submission of requests to participate, tenders by electronic means and
3.
encryption and time recording methods used.

(4) The contracting authority shall determine the required level of security for the electronic means. Electronic means used by the contracting authority to receive tenders and requests to participate must ensure that:

1.
the time and day of data receipt must be precisely determined,
2.
no early access to the received data is possible,
3.
the date for the first access to the received data can only be set or changed by the authorized persons,

4.

only the authorized persons have access to the received data or to part of it,

5.

only the entitled parties may grant third parties access to the received data or to part of it after the specified date,

6.

data received is not transmitted to unauthorised persons and

7.

violations or attempted violations of the requirements set out in points 1 to 6 can be clearly identified.

(5) The electronic means used by the contracting authority for the receipt of tenders and requests to participate must have a uniform data exchange interface. The applicable interoperability and security standards for information technology in accordance with § 3 (1) of the Treaty on the Establishment of the IT Planning Council and on the Foundations of Cooperation in the Use of Information Technology in the Administrations of the Federation and the Länder of 1 April 2010 shall be used.

(6) In the procurement procedure, the contracting authority may require the use of electronic means which are not generally available (alternative electronic means) if it

1.

grants undertakings free, unrestricted, complete and direct access to these alternative electronic means at one internet address throughout the procurement procedure, and

2.

uses these alternative electronic means itself.

(7) The contracting authority may require the use of electronic means in the context of building information modelling for the award of construction services and for competitions. If the required electronic means for building information modelling are not generally available, the Client shall offer alternative access to them in accordance with paragraph 6.

§ 12

Contract Notice

(1)

1.

Public tenders must be advertised, e.g. in daily newspapers, official publications or on internet portals that can be used free of charge and are directly accessible; They can also be published on www.service.bund.de.

2.

These contract notices should contain the following information:

a)
Name, address, telephone, fax number and e-mail address of the contracting authority (awarding authority),

b)
selected award procedure,

c)
where appropriate, awarding contracts by electronic means and methods of encryption and decryption,

d)
Type of contract,

e)
Place of execution,

f)
Type and scope of the service,

g)
information on the purpose of the construction or the contract, if planning services are also required,

h)
if the contract is divided into several lots, the nature and size of each lot and the possibility of submitting tenders for one, several or all lots,

i)
the date by which the construction work is to be completed or the duration of the construction contract; if possible, the time at which the construction work is to begin,

j)
if applicable, information pursuant to Section 8 (2) number 3 on the non-admission of ancillary offers,

k)
if applicable, information pursuant to Section 8 (2) number 4 on the non-admission of the submission of several main tenders,

l)
the name and address, telephone and fax numbers, e-mail address of the body from which the tender documents and additional documents can be requested and inspected; if the contract notice is published on an internet portal, the indication of an internet address at which the tender documents can be accessed free of charge, without restriction, in full and directly; Section 11 (7) shall remain unaffected,

m)

where applicable, the amount and conditions for payment of the amount to be paid in respect of the documents;

n)

in the case of an application to participate: the deadline for receipt of the requests to participate, the address to which these applications are to be sent, the date on which the invitations to tender are sent at the latest,

o)

the deadline for receipt of tenders and the binding period,

p)

the address to which the tenders are to be addressed, including, where applicable, the address to which tenders are to be submitted electronically,

q)

the language in which the tenders must be drafted,

r)

the award criteria, if they are not specified in the tender documents, and, if applicable, their weighting,

s)

the date, time and place of the opening date as well as an indication of the persons who may be present at the opening of the offers,

t)

any collateral required,

u)

essential financing and payment terms and/or references to the relevant provisions in which they are contained,

v)

where applicable, the legal form that the bidding consortium must have after the contract has been awarded,

w)

required evidence for the assessment of the suitability of the applicant or tenderer,

x)

the name and address of the body to which the candidate or tenderer may apply for the purpose of reviewing alleged infringements of procurement provisions.

(2)

1.

In the case of a restricted invitation to tender with a participation competition, the companies must be invited to apply for participation in the competition by means of contract notices, e.g. in daily

newspapers, official publications or on freely usable and directly accessible Internet portals. The contract notice may also be published on www.service.bund.de.

2.

These contract notices shall contain the information referred to in Paragraph 12(1)(2).

(3) Applications to participate shall also be considered if they are transmitted electronically by fax or in any other way, provided that the other conditions of participation are met.

§ 12a

Dispatch of procurement documents

(1) Insofar as the procurement documents are not made available electronically within the meaning of Section 11 (2) and (3), they shall be

1.

to the undertakings without undue delay in an appropriate manner.

2.

in the case of restricted tendering and direct award to all selected applicants on the same day.

(2) If no reproductions of the documents essential for the determination of the price can be submitted, they shall be sufficiently laid out for inspection.

(3) The names of the undertakings which have received or inspected tender documents shall be kept secret.

(4) If undertakings request additional relevant information on the tender documents, this information shall be provided to all undertakings without delay in the same manner.

§ 13 Form and content of the tenders

(1)

1.

The contracting authority shall determine the form in which the tenders are to be submitted. Bids submitted in writing must be signed. Electronic tenders are to be submitted in text form or provided

with

a)

an advanced electronic signature,

b)

a qualified electronic signature,

c)

an advanced electronic seal, or

d)
a qualified electronic seal

2.

The Client shall ensure the data integrity and confidentiality of the tenders in an appropriate manner. Tenders submitted by post or directly must be submitted in a sealed envelope, marked as such and kept under lock and key until the deadline for submission has expired. In the case of electronically transmitted tenders, this must be ensured by appropriate technical solutions according to the requirements of the client and by encryption. The encryption must be maintained until the first offer opens.

3.

The offers must include the required prices.

4.

The offers must contain the required declarations and evidence.

5.

Changes to the tender documents are not permitted. Changes made by the bidder to his entries must be beyond doubt.

6.

Bidders may use a self-made copy or abridged version of the tender specifications for the submission of tenders if they accept the wording of the specifications written by the contracting authority in the tender as the only binding one; However, abstracts must reproduce the ordinal numbers (items) in full, in the same order and with the same numbers as in the bill of quantities drawn up by the contracting authority.

7.

Samples and samples of the bidders must be marked as belonging to the tender.

(2) A service which deviates from the technical specifications provided for in Paragraph 7a(1) may be offered if it is equivalent to the required level of protection in terms of safety, health and fitness for use. The deviation must be clearly indicated in the tender. Equivalence must be proven with the tender.

(3) The number of ancillary tenders shall be listed in a place designated by the contracting authority in the tender documents. Any ancillary offers must be prepared on a special annex and clearly marked as such. If several main bids are submitted, each must be eligible for award on its own. Paragraph 1 number 2 sentence 2 shall apply mutatis mutandis to each main tender.

(4) To the extent that price reductions are granted without conditions, they shall be listed in a place designated by the contracting authority in the tender documents.

(5) Bidding consortia shall appoint the members and designate one of their members as an authorised representative for the conclusion and performance of the contract. If the name of the authorised representative is missing from the tender, it must be provided before the contract is awarded.

(6) The contracting authority shall include the requirements for the content of the tenders pursuant to subsections (1) to (5) in the tender documents.

§ 14

Opening of tenders, opening date in the case of exclusive admission of electronic tenders

(1) If only electronic tenders are permitted, the tenders shall be opened jointly by at least two representatives of the contracting authority on one date (opening date) immediately after the expiry of the tender period. Until this date, the electronic offers must be labelled and stored in encrypted form.

(2)

1.

The negotiator determines whether the electronic offers are encrypted.

2.

The offers will be opened and marked in all essential parts on the opening date.

3.

Samples and samples of the bidders must be on hand at the appointment.

(3) A transcript of the opening date shall be prepared in text form in which the two representatives of the contracting authority shall be named. The minutes must be accompanied by a list with the following information:

a)

the name and address of the bidders,

b)

the final amounts of the offers or individual lots,

c)

unconditional discounts,

d)

Number of respective ancillary offers.

(4) Tenders received after the expiry of the tender period shall be specifically listed in the minutes or in a supplement. The times of receipt and any known reasons for which the offers were not available

must be noted.

(5) An offer which was demonstrably received by the contracting authority before the expiry of the tender period, but which was not submitted to the negotiator, shall be recorded with all the information in the minutes or in an addendum. The bidders must be informed of this fact immediately in text form. The notification shall include the determination of whether the tenders were encrypted and the information referred to in paragraph 3(a) to (d). In all other respects, subsection 4 sentence 2 shall apply.

(6) In the case of invitations to tender, the contracting authority shall immediately make available to tenderers electronically the information referred to in points (a) to (d) of paragraph 3. The bidders and their authorised representatives shall be permitted to inspect the minutes and their supplements (subsections 4 and 5 and Section 16c subsection 3).

(7) The minutes may not be published.

(8) The offers and their annexes are to be carefully stored and kept secret.

§ 14a

Opening of tenders, opening date in case of admission of written tenders

(1) If written tenders are admissible, an opening date shall be held in invitations to tender for the opening and reading (opening) of the tenders, at which only the bidders and their authorised representatives may be present. Until this date, the offers received must be marked with a note of receipt on the unopened envelope and kept under lock and key. Electronic offers must be marked and stored in encrypted form.

(2) Only tenders received by the expiry of the tender period shall be admitted to the opening.

(3)

1.

The negotiator determines whether the seal of the written offers is intact and whether the electronic offers are encrypted.

2.

The offers will be opened and marked in all essential parts on the opening date. The name and address of the bidders and the final amounts of the bids or individual lots, as well as unconditional price reductions, will be read out. It will be announced whether and by whom and in what number side bids have been submitted. Further information on the content of the offers is not to be disclosed.

3.

Samples and samples of the bidders must be on hand at the appointment.

(4)

1.

A record of the opening date must be prepared in written form or in electronic form. It shall state that the information referred to in subsection (3) number 2 has been read out and acknowledged as correct, or that any objections have been raised.

2.

It shall be signed by the negotiator or signed in accordance with Section 13 (1) number 1; the bidders and authorised representatives present are entitled to sign or to affix a signature in accordance with Section 13 (1) number 1.

(5) Tenders received after the expiry of the tender period (subsection 2) shall be specifically listed in the minutes or in a supplement. The times of receipt and any known reasons for which the offers were not available must be noted. The envelope and other evidence must be kept.

(6) A tender which was demonstrably received by the contracting authority before the expiry of the tender period, but which was not submitted to the negotiator, shall be recorded with all the information in the minutes or in an addendum. The bidders must be informed of this fact immediately in text form. The notification shall include the determination of whether the closure was intact and the information referred to in paragraph 3(2). In all other respects, subsection 5 sentences 2 and 3 shall apply.

(7) The bidders and their authorised representatives shall be permitted to inspect the minutes and their supplements (subsections 5 and 6 and Section 16c subsection 3); after the application has been submitted, the bidders must be informed immediately of the names of the bidders as well as the final amounts of the bids read out and recalculated, as well as the number of their ancillary bids after the mathematical check.

(8) The minutes may not be published.

(9) The offers and their annexes shall be carefully stored and kept secret; this also applies to direct awards.

§ 15

Clarification of the content of the offer

(1)

1.

In the case of invitations to tender, the contracting authority may only demand clarification from a bidder after the tenders have been opened until the contract has been awarded, in order to ascertain its suitability, in particular its technical and economic capacity, the tender itself, any ancillary offers, the planned method of implementation, any places of origin or sources of supply of materials or components and, if necessary, the reasonableness of the prices by inspecting the price determinations to be submitted (calculations).

2.

The results of such investigations are to be kept secret. They are to be set down in text form.

(2) If a bidder refuses to provide the required clarifications and information, or if he allows the reasonable period set for him to elapse unanswered, his bid shall be excluded.

(3) Negotiations, in particular on changes to offers or prices, are not permissible, except if they are necessary in the case of ancillary offers or offers on the basis of a service programme in order to agree on unavoidable technical changes of minor scope and resulting changes in prices.

§ 16

Exclusion of offers

(1) The following shall be excluded:

1.

Tenders that have not been received by the deadline,

2.

Tenders that do not comply with the provisions of Section 13 (1) numbers 1, 2 and 5,

3.

Tenders that do not contain the required documents within the meaning of Section 8 (2) number 5 if the contracting authority has determined in accordance with Section 16a (3) that it will not request any additional documents. Sentence 1 shall apply mutatis mutandis to applications to participate,

4.

Tenders for which the tenderer has not submitted declarations or evidence which the contracting authority has reserved the right to submit within a reasonable period determined by the calendar upon request. Sentence 1 shall apply mutatis mutandis to applications to participate,

5.

Bids from bidders who have entered into an agreement with regard to the invitation to tender which constitutes an impermissible restriction of competition,

6.

Ancillary tenders, if the contracting authority has declared in the contract notice or in the tender documents that it will not admit them,

7.

main tenders of tenderers who have submitted several main tenders, if the contracting authority has not permitted the submission of several main tenders in the contract notice or in the tender documents,

8.

Ancillary offers that do not comply with Section 13 (3) sentence 2,

9.

main offers that do not comply with Section 13 (3) sentence 3,

10.

Bids from bidders who have intentionally made incorrect declarations in the procurement procedure with regard to their expertise, performance and reliability.

(2) In addition, tenders may be excluded from tenderers if:

1.

insolvency proceedings or comparable proceedings regulated by law have been opened or an application has been made for the opening of insolvency proceedings, or the application has been rejected for lack of assets, or an insolvency plan has been legally confirmed,

2.

the company is in liquidation,

3.

it can be proven that serious misconduct has been committed that calls into question the reliability of the applicant or tenderer,

4.

the obligation to pay taxes and contributions to social security has not been properly fulfilled,

5.

the company has not registered with the employers' liability insurance association.

§ 16a

Subsequent request for documents

(1) The contracting authority shall, in compliance with the principles of transparency and equal treatment, request tenderers who are eligible for the contract to submit, complete or correct missing, incomplete or incorrect company-related documents – in particular declarations, information or evidence – or to submit missing or incomplete performance-related documents – in particular declarations, product and other information or evidence – or (additional claim), unless he has made use of his right under subsection 3. Only documents that were already to be submitted with the offer are to be requested.

(2) Missing price information may not be requested later. Tenders which do not comply with the provisions of Section 13 (1) number 3 shall be excluded. This does not apply to tenders in which the price is only missing in insignificant items and the competition and the order of evaluation are not impaired by the disregard of these items or in which these items are evaluated with the highest competitive price in each case. In this case, only the price is taken into account without taking into account any ancillary offers. The contracting authority shall request the tenderer in accordance with paragraph 1 to complete the missing price items. Sentences 3 to 5 shall not apply if the Client has excluded the subsequent request for price information in accordance with subsection 3.

- (3) The contracting authority may stipulate in the contract notice or the award documents that it will not request any additional documents or price information.
- (4) The documents or missing price information shall be submitted by the applicant or tenderer upon request by the contracting authority within a reasonable period of time determined in accordance with the calendar. The deadline should not exceed six calendar days.
- (5) If the requested documents are not submitted within the time limit, the tender shall be excluded.
- (6) Subsections (1), (3), (4) and (5) shall apply mutatis mutandis to the competition.

§ 16b
Suitability

- (1) In the case of a public tender, the suitability of the bidders shall be examined. In this context, the bids of the bidders whose suitability provides the guarantees necessary for the fulfilment of the contractual obligations must be selected on the basis of the evidence submitted; this means that they have the necessary expertise, performance and reliability and have sufficient technical and economic resources.
2. By way of derogation from paragraph 1, tenders may be examined first, provided that it is ensured that the subsequent examination of suitability is carried out impartially and transparently.
- (3) In the case of a restricted invitation to tender and direct award, only circumstances are to be taken into account which, after the invitation to submit a tender, give rise to doubts as to the suitability of the bidder (see Section 6b (4)).

§ 16c
Examination

- (1) The bids of suitable bidders, which are not excluded, shall be examined for compliance with the requirements set, in particular from a mathematical, technical and economic point of view.
- (2)
- 1.
- If the total amount of an ordinal number (item) does not correspond to the result of the multiplication of the quantity approach and the unit price, the unit price shall be decisive.
- 2.
- If a lump sum is awarded, this applies regardless of any individual prices indicated.
- 3.
- Numbers 1 and 2 also apply in the case of direct awards.

(3) The final bid sums determined on the basis of the examination shall be noted in the minutes of the opening date.

§ 16d
Evaluation

(1)

1.

A bid with an unreasonably high or low price may not be accepted.

2.

If a tender price appears to be unreasonably low and the appropriateness cannot be assessed on the basis of available documents on the price determination, the bidder must be requested in text form to provide information on the determination of the prices for the entire service or for partial services, if necessary by specifying a reasonable response period. When assessing appropriateness, the economic efficiency of the construction method, the technical solutions chosen or other favourable execution conditions must be taken into account.

3.

Only those bids are shortlisted which, taking into account rational construction operations and economical economic management, can be expected to be flawlessly executed, including liability for defect claims.

4.

The contract will be awarded to the most economical bid. The basis for this is an assessment by the contracting authority as to whether and to what extent the bid meets the specified award criteria. The most economical offer is determined by the best price-performance ratio. In addition to the price or costs, qualitative, environmental or social aspects can also be taken into account to determine this.

5.

Only award criteria and, where applicable, their weighting that are specified in the contract notice or in the tender documents may be taken into account. In addition to the price or costs, award criteria can be in particular:

a)

Quality including technical value, aesthetics, practicality, accessibility, "design for all", social, environmental and innovative characteristics;

b)

the organisation, qualifications and experience of the staff entrusted with the performance of the contract, if the quality of the personnel employed may have a significant influence on the level of performance of the contract, or

c)

after-sales service and technical assistance, as well as execution time.

The award criteria must be related to the subject matter of the contract. Award criteria are related to the subject-matter of the contract if they relate to it in any respect, even if such factors do not affect the physical characteristics of the subject-matter of the contract.

6.

The award criteria must be defined and defined in such a way as to ensure the possibility of effective competition, to prevent the award of the contract arbitrarily and to enable effective verification of whether and to what extent the tenders meet the award criteria.

7.

Fixed prices or fixed costs can also be specified, so that competition only takes place on the basis of quality.

(2) An offer pursuant to Section 13 (2) shall be regarded as a main offer.

(3) Ancillary tenders shall be assessed unless the contracting authority has not admitted them in the contract notice or in the tender documents.

(4) Price reductions without conditions shall not be assessed if they are not listed in the place designated by the contracting authority in accordance with Section 13 (4). Unsolicited discounts with conditions for the payment period (cash discounts) will not be taken into account in the evaluation of the offers.

(5) The provisions of subsection (1) and Section 16b shall also apply in the case of direct award. Subsections (2) to (4), Section 16 (1) and Section 6 (2) shall also apply mutatis mutandis in the case of direct awards.

§ 17

Cancellation of the tender

(1) The tender may be cancelled if:

1.

no tender has been received that complies with the tender conditions,

2.

the procurement documents must be fundamentally changed,

3.

there are other serious reasons.

(2) Applicants and tenderers shall be informed immediately in text form of the cancellation of the invitation to tender, stating the reasons and, if necessary, of the intention to initiate a new award procedure.

§ 18
Surcharge

- (1) The contract shall be awarded as soon as possible, but at least in time for the tenderer to receive the declaration before the expiry of the binding period (Section 10 (4) to (6)).
- (2) If extensions, restrictions or changes are made or if the contract is awarded late, the tenderer shall be requested to declare his acceptance without delay when the contract is awarded.

§ 19
Applications and offers not considered

- (1) Bidders whose tenders have been excluded (Section 16) and those whose tenders are not shortlisted shall be informed immediately. The other tenderers shall be informed as soon as the contract has been awarded.
- (2) Upon request, the unsuccessful applicants or tenderers shall be informed in text form within a period of 15 calendar days of receipt of their application submitted in text form of the reasons for the non-consideration of their application or tender, and the tenderers shall also be informed of the characteristics and advantages of the successful tenderer's offer and the name of the successful tenderer.
- (3) Bids and elaborations of the bidders that have not been taken into account may not be used for a new award or for other purposes.
- (4) Drafts, elaborations, samples and samples of bids not considered are to be returned if this is requested in the bid or within 30 calendar days after the bid has been rejected.

§ 20
Documentation, duty to provide information

- (1) The award procedure shall be documented promptly in such a way that the individual stages of the procedure, the individual measures, the relevant findings and the reasons for the individual decisions are recorded in text form. This documentation must contain at least:

1.
Name and address of the client,
2.
Type and scope of the service,
3.
value of the contract,
- 4.

the names of the candidates or tenderers considered and the reasons for their selection;

5.

the names of the candidates or tenderers who were not considered and the reasons for the rejection,

6.

Reasons for rejecting unusually low tenders,

7.

the name of the contractor and the reasons for awarding the contract to its tender,

8.

Share of the intended transfer to subcontractors, if known,

9.

in the case of a restricted invitation to tender without a competitive bidding process, private award, reasons for the choice of the respective procedure,

10.

where applicable, the reasons why the contracting authority has waived the award of a contract.

The contracting authority shall take appropriate measures to document the course of the procurement procedures carried out by electronic means.

(2) If the submission of documents and evidence requested in addition to the offer is waived, this must be justified in the documentation. This shall also apply to the waiver of information on suitability pursuant to Section 6a (5).

(3) After the contract has been awarded, the contracting authority shall provide information in an appropriate manner, e.g. on internet portals or in the procurer profile, if:

1.

In the case of restricted tenders without a competitive bidding process, the contract value is EUR 25 000 excluding VAT,

2.

Contracts awarded privately: the contract value 15,000 euros excluding VAT

exceeds. This information shall be retained for six months and shall contain the following information:

a)

name, address, telephone number, fax number and e-mail address of the client,

b)

selected award procedure,

c)

Subject of the contract,

d)
Place of execution,

e)
Name of the contracted company.

(4) The contracting authority shall continuously inform companies on internet portals or in its procurement profile about intended restricted tenders pursuant to Section 3a (2) number 1 from an expected contract value of EUR 25,000 excluding VAT.

This information must include the following information:

1.
name, address, telephone number, fax number and e-mail address of the client,

2.
Subject of the contract,

3.
Place of execution,

4.
the type and expected scope of the service,

5.
Expected period of execution.

§ 21 Inspection bodies

The contract notice and the tender documents shall indicate the review bodies with their addresses to which the candidate or tenderer may turn for the purpose of verifying alleged infringements of the procurement provisions.

§ 22 Changes during the term of the contract

Amendments to the contract in accordance with the provisions of the VOB/B do not require a new award procedure; this does not apply to amendments to the contract pursuant to Section 1 (4) sentence 2 VOB/B.

§ 23

Construction concessions

(1) A works concession is a contract for the performance of a works contract in which the consideration for the construction work consists of a temporary right to use the construction work instead of a fee, plus the payment of a price, if necessary.

(2) Sections 1 to 22 shall apply mutatis mutandis to the award of building concessions.

§ 24

Assignment abroad

For the award of construction services by a foreign office abroad or by a domestic office that awards construction services to be performed abroad,

1.

Direct awards are made if this is permitted by implementing regulations of a federal or state ministry up to a certain maximum value (value limit),

2.

information pursuant to § 6a is dispensed with if the local conditions require an award abroad and the information cannot be obtained due to the local conditions,

3.

by way of derogation from Section 8a (1), the agreement of the VOB/B and VOB/C may be waived if the local conditions require an award abroad and the waiver of the agreement of the VOB/B and VOB/C in individual cases, the underlying contract ensures an economic use of the budget funds and the desired technical standards are met.

Appendix TS

Technical Specifications

1.

"Technical Specification" has one of the following meanings:

a)

in the case of public works contracts, all the technical descriptions contained, in particular in the tender documents, defining the properties required of a material, product or supply to enable it to fulfil the purpose intended by the contracting authority; these characteristics include environmental and climate performance levels, "design for all" (including access for persons with disabilities) and conformity assessment, performance, usability, safety or dimensions, including quality assurance procedures, terminology, symbols, test and inspection methods, packaging, marking and labelling, instructions for use, and production processes and methods at each stage of the process. life cycle of construction services; it also includes the rules for design and cost accounting, the conditions for testing, inspection and acceptance of works, the construction methods or procedures and any other technical requirements that the contracting authority is able to specify for finished works or the materials or parts necessary for them by means of general and specific regulations;

b)

in the case of public service or supply contracts, a specification contained in a document prescribing characteristics for a product or service, such as quality levels, environmental and climate performance levels, 'design for all' (including access for persons with disabilities) and conformity assessment, performance, requirements for usability, safety or dimensions of the product, including the rules on the name of sale; terminology, symbols, tests and test methods, packaging, marking and labelling, instructions for use, production processes and methods at each stage of the supply or service life cycle and conformity assessment procedures;

2.

'Standard' means a technical specification adopted by a recognised standardisation organisation for repeated or continuous application, compliance with which is not mandatory, and which falls under one of the following categories:

a)

International standard: standard adopted by an international standardisation organisation and available to the public;

b)

European standard: standard adopted by a European standardisation organisation and available to the public;

c)

national standard: standard adopted by a national standardisation organisation and available to the public;

3.

'European Technical Assessment' means a documented assessment of the performance of a construction product in relation to its essential characteristics in accordance with the relevant European Assessment Document, as defined in Article 2(12) of Regulation (EU) No 305/2011 of the European Parliament and of the Council;

4.

'common technical specifications' means technical specifications in the ICT field established in accordance with Articles 13 and 14 of Regulation (EU) No 1025/2012;

5.

'technical reference' means any reference framework, other than a European standard, developed by the European standardisation organisations in accordance with procedures adapted to the needs of the market.

Section 2 *

Procurement provisions in the scope of application

Directive 2014/24/EU³ (VOB/A – EU)⁴

§ 1 EU

Scope

(1) Construction contracts are contracts for the execution or simultaneous planning and execution

1.

of a construction project or a work for a contracting authority that

a)

is the result of civil engineering or building construction work and

b)

is intended to fulfil an economic or technical function, or

2.

a construction service of direct economic benefit to the contracting authority carried out by third parties in accordance with the requirements specified by the contracting authority, the contracting authority having a decisive influence on the nature and planning of the project.

(2) The provisions of this Section shall be applied by contracting authorities within the meaning of Section 99 GWB for works contracts in respect of which the estimated total contract value of the construction measure or the building (all construction contracts for a construction facility) corresponds at least to the threshold value for construction contracts exclusive of VAT regulated in Section 106 GWB. The estimate of the contract value must be made in accordance with § 3 VgV.

§ 2 EU

Principles

(1) Public contracts shall be awarded in competition and by means of transparent procedures. In doing so, the principles of efficiency and proportionality are observed. Restrictive and unfair practices must be combated.

(2) Participants in an award procedure shall be treated equally, unless unequal treatment is expressly required or permitted by the GWB.

(3) Public contracts shall be awarded to competent and efficient (suitable) undertakings which have not been excluded under Paragraph 6e EU.

4. Several contracting authorities may agree to award a specific contract jointly. § 4 VgV applies.

(5) The provisions on when natural persons are considered biased in decisions in an award procedure for a public contracting authority and may not participate in an award procedure are governed by § 6 VgV.

(6) Contracting authorities, applicants, tenderers and contractors shall maintain the confidentiality of all information and documents in accordance with these Public Procurement Regulations or other legal provisions.

7. Before initiating a procurement procedure, the contracting authority may carry out market consultations in order to prepare for the award of the contract and to inform contractors of its plans for the award of the contract and the requirements for the contract. The implementation of procurement procedures for the purpose of market exploration is not permitted.

(8) The contracting authority shall not issue a call for tenders until all the tender documents have been completed and if execution can begin within the specified deadlines.

(9) Efforts shall be made to award contracts in such a way as to promote year-round construction activity.

§ 3 EU

Types of allocation

Public contracts are awarded in an open procedure, in a restricted procedure, in a negotiated procedure, in a competitive dialogue or in an innovation partnership.

1.

The open procedure is a procedure in which the contracting authority publicly invites an unlimited number of companies to submit tenders.

2.

The restricted procedure is a procedure in which the contracting authority, after a prior public invitation to participate, selects a limited number of undertakings on the basis of objective, transparent and non-discriminatory criteria (competitive tender) to which it invites tenders.

3.

The negotiated procedure is a procedure in which the contracting authority, with or without a competitive bidder, approaches selected undertakings in order to negotiate the tenders with one or more of these undertakings.

4.

Competitive dialogue is a public procurement procedure with the aim of identifying and defining the means by which the needs of the contracting authority can best be met.

5.

The Innovation Partnership is a process for the development of innovative construction services not yet available on the market and the subsequent acquisition of the resulting services.

§ 3a EU
Admissibility requirements

1. The contracting authority shall choose between open and restricted procedures. The other types of proceedings are only available to the extent permitted by statutory provisions or in accordance with paragraphs 2 to 5.

(2) The negotiated procedure with participation competition shall be permissible,

1.

if at least one of the following criteria is met:

a)

the needs of the contracting authority cannot be met without adapting solutions already available;

b)

the assignment includes conceptual or innovative solutions;

c)

the contract cannot be awarded without prior negotiation due to specific circumstances related to the nature, complexity or legal or financial framework or the risks involved;

d)

the technical specifications may not be drawn up by the contracting authority with sufficient precision by reference to a standard, a European Technical Assessment (ETA), a common technical specification or technical references as defined in points 2 to 5 of Annex TS to Directive 2014/24/EU.

2.

if an open procedure or restricted procedure has been cancelled because of improper or unacceptable tenders. In particular, tenders that do not comply with the tender documents, have not been received on time, are demonstrably based on collusion or corruption or are abnormally low in the opinion of the contracting authority are not properly accepted. In particular, tenders from tenderers who do not have the necessary qualifications and tenders whose price exceeds the contracting authority's budget set and documented in writing before the start of the procurement procedure are unacceptable.

(3) The negotiated procedure without a competitive bidding process shall be permissible:

1.

if in an open or restricted procedure

a)

no proper or only unacceptable bids have been submitted, and

b)

all – and only those – bidders from the previous procedure who are competent and capable (suitable) and who have not been excluded under § 6e EU are included in the negotiated procedure.

2.

if in an open or restricted procedure

a)

no bids or requests to participate have been submitted, or

b)

only tenders or applications to participate have been submitted by such applicants or bidders who are not competent or capable (suitable) or who have been excluded pursuant to § 6e EU, or

c)

only those tenders have been submitted which do not meet the conditions specified in the tender documents

and the original contract documents are not fundamentally changed. A report will be submitted to the European Commission on request.

3.

if the services can only be provided by a specific company for one of the following reasons:

a)

the creation or acquisition of a unique work of art or artistic achievement as the purpose of the awarding of the contract;

b)

non-existent competition for technical reasons;

c)

Protection of exclusive rights, including intellectual property rights.

The exceptions set out in points (b) and (c) apply only where there is no reasonable alternative or alternative solution and the lack of competition is not the result of an artificial restriction of the procurement parameters.

4.

if, due to the extreme urgency of the performance, the deadlines prescribed in Paragraph 10a EU, Paragraph 10b EU and Paragraph 10c EU(1) cannot be complied with for compelling reasons as a result of events which the contracting authority did not cause and could not have foreseen.

5.

if there is a repetition of similar works awarded by the same contracting authority to the contractor who won the original contract and if they correspond to a basic design and that design was the subject of the initial contract awarded in accordance with Paragraph 3a EU. The scope of the subsequent works and the conditions under which they will be awarded shall be specified in the initial project. The possibility of using this procedure must be indicated when the contract notice for

the first project is published; the total contract value envisaged for the continuation of the construction work shall be taken into account by the contracting authority in the application of Paragraph 3 of the VgV. However, this procedure may only be used within three years of the conclusion of the first contract.

(4) Competitive dialogue shall be permissible under the conditions set out in subsection (2).

5. For the award of a public contract, the contracting authority may enter into an innovation partnership with the aim of developing an innovative service and subsequently acquiring it. The procurement needs underlying the Innovation Partnership must not be able to be met by construction services already available on the market.

§ 3b EU Procedure

(1) In an open procedure, an unlimited number of undertakings shall be publicly invited to submit tenders. Any interested company can submit a bid.

(2)

1.

In a restricted procedure, an unlimited number of companies are publicly invited to submit applications to participate as part of a participation competition. Any interested company can submit an application to participate. With the application to participate, the undertakings shall provide the information required by the contracting authority for the purpose of assessing suitability and the absence of grounds for exclusion.

2.

Only those undertakings which are requested to do so by the contracting authority following an assessment of the information provided may submit a tender.

3.

The contracting authority may limit the number of suitable candidates invited to submit tenders. To that end, the contracting authority shall indicate in the contract notice or the invitation to confirm interest the objective and non-discriminatory criteria of suitability which it envisages for the limitation of the number, the minimum number envisaged and, where appropriate, the maximum number of candidates to be invited. The minimum number of candidates to be invited must not be less than five. In any case, the number of invited applicants must be sufficiently high to ensure genuine competition. Where a sufficient number of suitable candidates are available, the contracting authority shall invite a number of them not less than the minimum number specified.

If the number of suitable candidates is less than the minimum number, the contracting authority may continue the procedure only with this suitable candidate(s).

(3)

1.

In a negotiated procedure with a participation competition, an unlimited number of companies are publicly invited to submit applications to participate within the framework of the participation competition. Any interested company can submit an application to participate. With the application to participate, the undertakings shall provide the information required by the contracting authority for the purpose of assessing suitability and the absence of grounds for exclusion.

2.

Only those undertakings which are requested to do so by the contracting authority following an assessment of the information provided may submit an initial tender, which will form the basis for subsequent negotiations.

3.

In all other respects, paragraph 2(3) shall apply subject to the proviso that the minimum number to be specified in the contract notice or the invitation to confirm interest may not be lower than three.

4.

In a negotiated procedure without a competitive bidding process, there is no public invitation to participate.

5.

The minimum requirements and the award criteria are not subject to negotiation.

6.

The contracting authority negotiates with the tenderers on the initial tenders submitted by them and all subsequent tenders, with the exception of the final tenders, with the aim of improving the content of the tenders.

7.

The contracting authority may award public contracts on the basis of initial tenders without entering into negotiations if it has indicated in the contract notice or in the call for confirmation of interest that it reserves the right to do so.

8.

The contracting authority may provide for the negotiated procedure to be carried out in different successive stages in order to reduce the number of tenders to be negotiated or the solutions to be discussed on the basis of the award criteria predetermined. If the contracting authority so provides, it shall indicate this in the contract notice, the invitation to confirm interest or in the tender documents.

In the final phase of the procedure, there must be enough bids to ensure genuine competition, provided that there is a sufficient number of suitable bidders.

9.

The contracting authority shall ensure that all tenderers are treated equally in the negotiations. In particular, it shall refrain from any discriminatory disclosure of information by which certain bidders could be favoured over others. It shall inform all tenderers whose tenders have not been eliminated in accordance with point 8 in writing of any changes to the tender specifications, in particular to the technical requirements or other elements of the tender documents which do not relate to the determination of the minimum requirements. Following such amendments, the contracting authority

shall give tenderers sufficient time to amend their tenders and, if necessary, to submit revised tenders. The contracting authority may not disclose confidential information of a tenderer participating in the negotiations to the other participants without the latter's consent. Such consent may not be given in general, but is only given in relation to the intended communication of certain information.

10.

If the contracting authority intends to conclude the negotiations, it shall inform the remaining tenderers and set a uniform deadline for the submission of new or revised tenders. It shall ensure that the final tenders meet the minimum requirements and shall award the contract.

(4)

1.

In the case of competitive dialogue, the contracting authority publicly invites an unlimited number of companies to submit applications to participate within the framework of a participation competition. Any interested company can submit an application to participate. With the application to participate, the undertakings shall provide the information required by the contracting authority for the purpose of assessing suitability and the absence of grounds for exclusion.

2.

Only those undertakings that are requested to do so by the contracting authority following an assessment of the information provided can enter into a dialogue with the contracting authority. In all other respects, paragraph 2(3) shall apply subject to the proviso that the minimum number to be specified in the contract notice may not be less than three.

3.

In the contract notice or the tender documents for the purpose of conducting a competitive dialogue, the contracting authority describes its needs and requirements for the service to be procured. At the same time, it explains and defines the award criteria on which this is based and sets a preliminary timeframe for negotiations.

4.

The contracting authority initiates a dialogue with the selected companies in order to identify and determine how best to meet its needs. In doing so, he can discuss all the details of the contract with the selected companies. It ensures that all companies are treated equally in the dialogue, does not pass on proposals for solutions or confidential information from one company to the other companies without its consent, and uses it only in the context of the procurement procedure.

5.

The contracting authority may provide for the dialogue to be conducted in different successive phases, provided that the contracting authority has indicated this in the contract notice or in the tender documents. At each stage of the dialogue, the number of solutions to be discussed can be reduced on the basis of the predetermined award criteria. The contracting authority must inform the companies if their solutions are not planned for the following dialogue phase. In the final phase, there must still be enough solutions to ensure genuine competition, provided that there was originally a sufficient number of solutions or suitable bidders.

6.

The contracting authority shall conclude the dialogue if:

a)
a solution has been found that meets their needs and requirements, or

b)
it is evident that no solution can be found.

The contracting authority shall inform the undertakings of the conclusion of the dialogue.

7.

In the case of point 6(a), the contracting authority shall invite the undertakings to submit their final tender on the basis of the solutions submitted and specified in the dialogue phase. The tenders must contain all the details necessary to carry out the project. The contracting authority may request clarifications and additions to these tenders. Such clarifications or additions must not have the effect of altering fundamental elements of the tender or contract notice, distorting competition or discriminating against other undertakings involved in the procedure.

8.

The contracting authority shall evaluate the tenders on the basis of the award criteria set out in the contract notice or in the description. The contracting authority may negotiate with the undertaking whose tender has been identified as the most cost-effective with a view to confirming financial commitments contained in the tender or other conditions to be finalised in the terms and conditions of the contract. This must not lead to a fundamental change in essential elements of the tender or the public contract, including the needs and requirements set out in the contract notice or the description, and to distort competition or discriminate against other undertakings involved in the procedure.

9.

If the contracting authority requires the undertakings participating in the competitive dialogue to prepare drafts, plans, drawings, calculations or other documents, it must uniformly grant appropriate reimbursement of costs to all undertakings that have submitted the required documents in good time.

(5)

1.

In the case of an innovation partnership, the contracting authority describes the demand for the innovative construction work in the contract notice or the tender documents. In doing so, it must be indicated which elements of this description constitute minimum requirements. Whereas eligibility criteria must be laid down concerning the capabilities of undertakings in the field of research and development and the development and implementation of innovative solutions; The information provided must be sufficiently accurate to enable companies to identify the nature and scope of the solution required and decide whether to apply to participate in the process.

2.

The contracting authority shall publicly invite an unlimited number of undertakings to submit applications to participate in a competition. Any interested company can submit an application to participate. With the application to participate, the undertakings shall provide the information required by the contracting authority for the purpose of assessing suitability and the absence of grounds for exclusion.

3.

Only those companies that are requested to do so by the contracting authority following an assessment of the information provided can submit a tender in the form of research and innovation projects. In all other respects, paragraph 2(3) shall apply subject to the proviso that the minimum number to be specified in the contract notice may not be less than three.

4.

The contracting authority negotiates with the tenderers on the initial tenders submitted by them and all subsequent tenders, with the exception of the final tenders, with the aim of improving the content of the tenders. The entire content of the contract may be negotiated, with the exception of the minimum requirements and award criteria laid down by the contracting authority in the tender documents. Where indicated by the contracting authority in the contract notice or in the tender documents, it may conduct the negotiations in different successive phases in order to reduce the number of tenders under negotiation on the basis of the award criteria set.

5.

The contracting authority shall ensure that all tenderers are treated equally in the negotiations. In particular, it refrains from any discriminatory disclosure of information which could favour certain tenderers over others. It shall inform all tenderers whose tenders have not been eliminated in accordance with number 4 sentence 3 in text form of any changes to the requirements and other information in the tender documents which do not relate to the determination of the minimum requirements. Following such amendments, the contracting authority shall give tenderers sufficient time to amend their tenders and, if necessary, to submit revised tenders. The contracting authority may not disclose confidential information of a tenderer participating in the negotiations to the other participants without the latter's consent. Such consent may not be given in general, but only in relation to the intended communication of certain information. The contracting authority must specify in the tender documents the arrangements in place to protect intellectual property.

6.

The innovation partnership is entered into by winning the bid of one or more bidders. The award of the contract solely on the basis of the lowest price or the lowest costs is excluded. The contracting authority may enter into the innovation partnership with one partner or with several partners carrying out separate research and development activities.

7.

The Innovation Partnership will be structured in two consecutive phases according to the research and innovation process:

a)

a research and development phase, which includes the production of prototypes or the development of the construction work, and

b)

a service phase in which the service resulting from the partnership is provided.

The phases are to be subdivided by setting intermediate targets, upon the achievement of which the payment of the remuneration in appropriate instalments is agreed. The contracting authority shall ensure that the structure of the partnership, and in particular the duration and value of each phase,

reflects the level of innovation of the proposed solution and the sequence of research and innovation activities. The estimated value of the construction work must not be disproportionate to the investments required for its development.

8.

On the basis of the intermediate targets, the contracting authority may decide at the end of each development stage whether to terminate the innovation partnership or, in the case of a multi-partner innovation partnership, to reduce the number of partners by terminating individual contracts, provided that the contracting authority has indicated in the contract notice or in the tender documents that these possibilities exist and under what circumstances can be made.

9.

At the end of the research and development phase, the contracting authority is only obliged to subsequently purchase the innovative service if the level of performance and the cost ceiling defined at the time of entering into the innovation partnership are complied with.

§ 4 EU

Types of contracts

(1) Construction contracts shall be awarded in such a way that the remuneration is calculated on the basis of performance (service contract), namely:

1.

as a rule, at unit prices for technically and economically uniform partial services, the quantity of which must be specified by the contracting authority in the contract documents in terms of size, weight or quantity (unit price contract),

2.

in suitable cases, for a lump sum if the service is precisely determined in terms of the type of performance and scope and a change in the execution is not to be expected (lump sum contract).

(2) By way of derogation from subsection (1), construction contracts of a smaller size which predominantly entail wage costs may be awarded on an hourly basis (hourly wage contract).

(3) The tender procedure shall be based on the fact that the tenderer must include the prices he demands for his services in the tender specifications or indicate them in another way in the tender.

(4) The bidding and rebidding procedure, in which prices quoted by the contracting authority are subject to the bidders' bidding and disbidding, shall only be applied in exceptional cases in the case of regularly recurring maintenance work, the scope of which is to be limited as far as possible.

§ 4a EU
Framework agreements

(1) A framework agreement shall be concluded within the framework of a type of procedure applicable in accordance with these Public Procurement Regulations. The envisaged contract volume must be determined and announced as precisely as possible, but does not have to be conclusively determined. A framework agreement shall not be abusive or applied in such a way as to impede, restrict or distort competition.

2. Individual contracts based on a framework agreement shall be awarded in accordance with the criteria set out in this paragraph and paragraphs 3 to 5. Individual contracts will be awarded exclusively between the contracting authorities named in the contract notice or the call for confirmation of interest and those undertakings which are parties to the framework agreement at the time the individual contract is concluded. No significant changes may be made to the terms of the framework agreement.

3. Where a framework agreement is concluded with only one undertaking, the individual contracts based on that framework agreement shall be awarded in accordance with the terms of the framework agreement. For the award of individual contracts, the contracting authority may request the undertaking party to the framework agreement in text form to complete its tender if necessary.

4. Where a framework agreement is concluded with more than one undertaking, individual contracts shall be awarded as follows:

1.

in accordance with the terms of the framework agreement, without a new tendering procedure, if the framework agreement lays down all the conditions for the performance of the works and the objective conditions for the selection of the undertakings which will carry out it as a party to the framework agreement; the latter conditions shall be set out in the contract notice or the tender documents for the framework agreement;

2.

if the framework agreement lays down all the conditions for the performance of the works, partly without a new award procedure in accordance with point 1 and partly with a new award procedure between the undertakings that are parties to the framework agreement in accordance with point 3, if this possibility is specified in the contract notice or the award documents for the framework agreement by the contracting authority; the decision whether to procure certain works following a new procurement procedure or directly in accordance with the terms of the framework agreement shall be taken on the basis of objective criteria set out in the contract notice or the tender documents for the framework agreement; the contract notice or the tender documents shall also specify the conditions that may be subject to a new award procedure; these possibilities shall also apply to any lot of a framework agreement for which all the conditions for the performance of the works are laid down in the framework agreement, regardless of whether all the conditions for the performance of a works service have been laid down for other lots; or

3.

unless all the conditions for the performance of the works are laid down in the framework agreement, by means of a new procurement procedure between the undertakings that are parties to the framework agreement.

(5) The award procedures referred to in points (2) and (3) of paragraph 4 shall be based on the same conditions as the conclusion of the framework agreement and, where necessary, on more detailed conditions and, where appropriate, on other conditions specified in the contract notice or the award documents for the framework agreement in accordance with the following procedure:

1.

before each individual contract is awarded, the contracting authority shall consult in text form with the undertakings capable of performing the contract;

2.

the contracting authority shall set a sufficient deadline for the submission of tenders for each individual contract; in doing so, it shall take into account, inter alia, the complexity of the subject matter of the contract and the time required to submit the tenders;

3.

the bids must be submitted in text form and may not be opened until the submission deadline has expired;

4.

the contracting authority shall award the individual contracts to the tenderer who has submitted the most economical tender in each case on the basis of the award criteria set out in the contract notice or in the documents relating to the framework agreement.

(6) The duration of a framework agreement may not exceed four years, unless there is a special case based on the subject-matter of the framework agreement.

§ 4b EU

Special instruments and methods

(1) The contracting authority may, subject to the conditions set out in Paragraphs 22 to 24 of the VgV, use a dynamic procurement system for the procurement of services customary in the market.

(2) The contracting authority may conduct an electronic auction in the context of an open, restricted or negotiated procedure prior to the award of the contract, provided that the requirements of §§ 25 and 26 VgV are met.

3. Where the use of electronic means of communication is compulsory, the contracting authority may stipulate that tenders must be submitted in the form of an electronic catalogue or include an electronic catalogue. The procedure is governed by § 27 VgV.

§ 5 EU

Einheitliche Vergabe, Vergabe nach Losen

(1) Construction contracts shall be awarded in such a way that uniform execution and unequivocally comprehensive liability for claims for defects is achieved; they are therefore to be awarded as a rule with the supplies belonging to the service.

(2)

1.

Medium-sized interests must be taken into account primarily when awarding public contracts. Services are to be divided in quantity (partial lots) and awarded separately according to type or subject area (subject lots). Several partial or specialist lots may be awarded together if economic or technical reasons so require. If an undertaking which is not a contracting authority is entrusted with the performance or performance of a public task, the contracting authority shall oblige the undertaking to proceed in accordance with sentences 1 to 3 if it subcontracts to third parties.

2.

If the contracting authority deviates from the requirement to divide lots, it shall justify this in the award note.

3.

The contracting authority shall indicate in the contract notice or in the invitation to confirm interest whether tenders may be submitted for only one lot or for several or all lots.

The contracting authority may limit the number of lots for which a single tenderer may be awarded a contract. This also applies if a bidder is allowed to submit bids for several or all lots. This limitation shall be permissible only if the contracting authority has indicated the maximum number of lots per tenderer in the contract notice or in the invitation to confirm interest. In the event that, following the application of the award criteria, an individual tenderer would obtain a larger number of lots than the maximum number previously determined, the contracting authority shall lay down objective and non-discriminatory rules for the award of the contract in the tender documents.

In cases where a single tenderer may be awarded more than one lot, the contracting authority may award contracts for several or all of the lots, provided that it has indicated in the contract notice or in the invitation to confirm interest that it reserves the right to do so and indicates the lots or groups of lots that may be combined.

§ 6 EU

Participants in the competition

(1) Public contracts shall be awarded to competent and efficient (suitable) undertakings which have not been excluded under Paragraph 6e EU.

(2) An undertaking shall be suitable if it fulfils the criteria laid down in detail by the contracting authority for the proper performance of the public contract (suitability criteria). The eligibility criteria may relate only to:

1.
Qualification and permission to practise a profession,
2.
economic and financial capacity,
3.
technical and professional performance.

The selection criteria must be related to the subject matter of the contract and proportionate to it.

(3)

1.
Competition must not be limited to companies based in certain regions or places.
2.
Applicant and bidder consortia are to be equated with individual applicants and bidders. In the event of the award of the contract, the contracting authority may require a consortium to adopt a certain legal form, provided that this is necessary for the proper performance of the contract.
3.
The contracting authority may restrict the right to participate in the procurement procedure under the conditions of Section 118 GWB.
4.
Where a candidate or tenderer or an undertaking related to it has advised or otherwise assisted the contracting authority before the initiation of the procurement procedure, the contracting authority shall take appropriate measures to ensure that competition is not distorted by the participation of that tenderer or candidate.

The candidate or tenderer concerned shall be excluded from the procedure only if there is no other way of ensuring the principle of equal treatment.

Prior to such exclusion, the contracting authority shall give candidates or tenderers the opportunity to demonstrate that their participation in the preparation of the procurement procedure is not likely to distort competition. The measures taken are documented in the award note.

§ 6a EU Proof of suitability

The contracting authority may impose on undertakings only the participation requirements referred to in points 1 to 3.

1.

In order to prove the competence and authorisation to practise the profession, the contracting authority may require entry in the register of professions, trade and trade registers or the register of craftsmen of its registered office or domicile.

2.

In order to demonstrate economic and financial standing, the contracting authority may require:

a)

the submission of appropriate bank declarations or, if applicable, proof of appropriate professional liability insurance.

b)

the submission of annual financial statements, if their publication is required by law in the country in which the company is established.

In addition, further information, for example on the relationship between assets and liabilities in the annual financial statements, may be requested. The methods and criteria for taking into account further information must be specified in the tender documents; They must be transparent, objective and non-discriminatory.

c)

a declaration of the company's turnover in relation to the last three completed financial years, insofar as it relates to construction services and other services comparable to the service to be awarded, including the share in the case of contracts carried out jointly with other companies.

In particular, the contracting authority may require undertakings to demonstrate a certain minimum annual turnover, including a minimum turnover in the area covered by the contract. The required minimum annual turnover may only exceed two times the estimated contract value in duly justified cases. The reasons must be stated in the tender documents or in the award note in accordance with § 20 EU.

If an order is divided into lots, these rules apply to each individual lot. However, the contracting authority may determine the minimum annual turnover required of undertakings by reference to a group of lots in the event that the successful tenderer is awarded several lots to be executed at the same time.

Where contracts based on a framework agreement are to be awarded as a result of a new call for competition, the maximum annual turnover shall be calculated on the basis of the expected maximum volume of specific contracts to be executed simultaneously or, if this is not known, on the basis of the estimated value of the framework agreement. In the case of dynamic procurement systems, the maximum annual turnover is calculated on the basis of the expected maximum volume of specific contracts to be awarded under this system.

The contracting authority shall admit other evidence of economic and financial standing which it deems appropriate if it finds that there are valid reasons for doing so.

3.

In order to demonstrate professional and technical capacity, the contracting authority may, depending on the nature, quantity or scope or intended use of the service put out to tender, require:

a)

Information on the performance of services in the last up to five completed calendar years that is comparable to the service to be awarded, whereby certificates of proper execution and the result must be attached for the most important construction works. In order to ensure sufficient competition, the contracting authority may indicate that it will also take into account relevant works carried out more than five years ago;

b)

an indication of the technical specialists or technical bodies, whether or not they belong to his undertaking, in particular those responsible for quality control and those available to the contractor responsible for the construction of the work;

c)

a description of the company's technical equipment and quality assurance measures and its research and research capabilities;

d)

Indication of the supply chain management and monitoring system available to the company for the performance of the contract;

e)

proof of studies and certificates of professional competence of the service provider or entrepreneur and/or the company's managers, unless they are assessed as an award criterion;

f)

an indication of the environmental management measures that the contractor may apply during the execution of the contract;

g)

data on the number of employees employed on an annual average in the last three completed calendar years, broken down by pay group with separately designated technical managers;

h)

a statement stating the equipment, equipment and technical equipment available to the undertaking for the performance of the contract;

i)

Indication of which parts of the contract the contractor may intend to subcontract.

§ 6b EU

Mittel der Nachweisführung, Verfahren

(1) Proof, including of the absence of grounds for exclusion pursuant to Paragraph 6e EU, may be provided as follows:

1.

by the entry in the generally accessible list of the Association for the Prequalification of Construction Companies (Prequalification Directory), which can be accessed directly by the contracting authority.

The information deposited in the prequalification register is not called into question without justification. With regard to the payment of taxes and duties as well as social security contributions, an additional certificate may generally be required.

Entry in an equivalent list of other Member States is also permitted as proof.

2.

by submitting individual references. The contracting authority may provide that self-declarations are sufficient for individual information. Self-declarations that serve as preliminary evidence must be confirmed by the tenderers whose bids are shortlisted by appropriate certificates from the competent authorities.

The contracting authority also accepts a European Single Procurement Document (ESPD) as provisional proof.

(2)

1.

If this is necessary for the proper conduct of the procedure, the contracting authority may, at any time during the procedure, require candidates and tenderers who have submitted a self-declaration to provide all or part of the supporting documents.

2.

In the open procedure, before awarding the contract, the contracting authority asks the tenderer to whom it intends to award the contract, which has so far only submitted a self-declaration as provisional evidence, to provide the relevant evidence without delay and examines it.

3.

In the case of the restricted procedure, the negotiated procedure, the competitive dialogue and the innovation partnership, the contracting authority invites the eligible candidates to substantiate their self-declarations without delay with relevant evidence and examines them. Candidates whose suitability offers the security necessary for the fulfilment of the contractual obligations must be selected.

4.

The contracting authority uses the e-Certis information system and primarily requires the types of certificates and documentary evidence covered by e-Certis.

(3) Companies do not have to provide evidence

–

if and to the extent that the awarding body can obtain it directly from a free national database in a Member State, or

–

if the awarding body is already in possession of this evidence.

§ 6c EU

Quality Assurance and Environmental Management

1. Where the contracting authority requires the submission of certificates from independent bodies in order to demonstrate that candidates or tenderers meet certain quality assurance standards, the contracting authority shall refer to quality assurance systems which:

1.
comply with the relevant European standards and

2.
are certified by accredited bodies.

The contracting authority shall also recognise equivalent certificates issued by accredited bodies in other countries. If, for reasons beyond its control, an undertaking has not been able to obtain the relevant certificates within the relevant time limits, the contracting authority shall also recognise other documents relating to equivalent quality assurance systems, provided that the undertaking demonstrates that the proposed quality assurance measures meet the required requirements. quality assurance standards.

2. Where the contracting authority requires the submission of certificates from independent bodies in order to demonstrate that the candidate or tenderer complies with certain environmental management systems or standards, the contracting authority shall refer to:

1.
either to the European Union's Eco-Management and Audit Scheme (EMAS), or

2.
to other environmental management systems recognised in accordance with Article 45 of Regulation (EC) 1221/2009, or

3.
to other environmental management standards based on the relevant European or international standards and certified by accredited bodies.

The contracting authority shall also recognise equivalent certificates issued by bodies in other countries. If an undertaking demonstrably did not have access to the certificates in question for reasons beyond its control, or if it was unable to obtain them within the relevant time limits for reasons beyond its control, the contracting authority must also recognise other evidence of equivalent environmental management measures. provided that the company demonstrates that these measures are equivalent to those required by the applicable system or standards for environmental management.

§ 6d EU
Capacities of other companies

(1) An applicant or tenderer may rely on other undertakings to prove his suitability – regardless of the legal nature of the links existing between him and these undertakings (suitability loan).

In that case, it shall demonstrate to the contracting authority that it will have the necessary capacities at its disposal, for example by submitting the binding commitments of those undertakings in this regard.

It is only possible to use the capacities of other undertakings for professional competence (Paragraph 6a EU paragraph 1 number 3 letter e) or professional experience (Paragraph 6a EU paragraph 1 number 3 letters a and b) if these undertakings carry out the work for which these capacities are required.

The contracting authority shall verify that these undertakings meet the relevant requirements for suitability in accordance with Paragraph 6a EU and that there are grounds for exclusion in accordance with Paragraph 6e EU. The contracting authority shall require the tenderer to replace an undertaking which does not meet a relevant suitability requirement or which is subject to grounds for exclusion in accordance with Paragraph 6e EU(1) to (5). The contracting authority may require the tenderer to replace an undertaking that is subject to grounds for exclusion in accordance with Paragraph 6e EU(6).

2. Where a candidate or tenderer makes use of the capacities of other undertakings in the light of the criteria of economic and financial standing, the contracting authority may require that the candidate or tenderer and those undertakings shall be jointly liable for the performance of the contract.

(3) If the capacities of other undertakings are used in accordance with subsection (1), the evidence must also be provided for these undertakings in accordance with Paragraph 6b EU.

4. The contracting authority may require that certain critical tasks be carried out directly by the tenderer himself or, if the tenderer is a member of a consortium, by a member of the consortium.

§ 6e EU
Exclusion criteria

(1) The contracting authority shall exclude an undertaking from participation at any stage of the award procedure if it is aware that a person whose conduct is attributable to the undertaking pursuant to subsection (3) has been convicted by a final judgment or that a fine has been finally imposed on the undertaking pursuant to Section 30 of the Act on Administrative Offences for an offence pursuant to:

1.

Section 129 of the Criminal Code (StGB) (formation of criminal organisations), Section 129a of the Criminal Code (formation of terrorist organisations) or Section 129b of the Criminal Code (criminal and terrorist organisations abroad),

2.

§ 89c of the Criminal Code (terrorist financing) or because of participation in such an act or because of the provision or collection of financial resources in the knowledge that these financial resources are or are to be used in whole or in part to commit an offence pursuant to § 89a (2) number 2 of the Criminal Code,

3.

Section 261 of the German Criminal Code (money laundering; concealment of illegally obtained assets),

4.

Section 263 of the Criminal Code (fraud), insofar as the offence is directed against the budget of the European Union or against households administered by or on behalf of the European Union,

5.

Section 264 of the Criminal Code (subsidy fraud), insofar as the offence is directed against the budget of the European Union or against budgets managed by or on behalf of the European Union,

6.

§ 299 of the Criminal Code (corruption and bribery in business transactions), §§ 299a and 299b of the Criminal Code (corruption and bribery in the health care sector),

7.

Section 108e of the Criminal Code (Bribery and bribery of elected officials),

8.

Sections 333 and 334 of the Criminal Code (granting of advantages and bribery), in each case also in conjunction with Section 335a of the Criminal Code (foreign and international employees),

9.

Article 2 § 2 of the Act on Combating International Bribery (Bribery of Foreign Members of Parliament in Connection with International Business Transactions) or

10.

§§ 232, 232a (1) to (5), §§ 232b to 233a of the Criminal Code (trafficking in human beings, forced prostitution, forced labour, exploitation of labour, exploitation by exploiting a deprivation of liberty).

(2) A conviction or the imposition of a fine within the meaning of subsection (1) shall be equivalent to a conviction or the imposition of a fine in accordance with the comparable provisions of other States.

(3) The conduct of a person who has been convicted by a final judgment shall be attributable to an undertaking if that person has acted as the person responsible for the management of the undertaking; this also includes the supervision of the management or the other exercise of supervisory powers in a managerial position.

(4) The contracting authority shall exclude an undertaking from participating in an award procedure if:

1.

the company has not fulfilled its obligations to pay taxes, duties and social security contributions and this has been established by a final court or final administrative decision, or

2.

the contracting authority can prove the breach of an obligation under point 1 by any other appropriate means.

Sentence 1 shall not apply if the company has fulfilled its obligations by making the payment or by undertaking to pay taxes, duties and social security contributions, including interest, late payment penalties and penalty surcharges.

(5) An exclusion pursuant to subsection (1) may be waived if this is required for compelling reasons of public interest. An exclusion pursuant to subsection 4 sentence 1 may be waived if this is required for compelling reasons of public interest or if an exclusion would be manifestly disproportionate. Section 6f EU paragraphs 1 and 2 shall remain unaffected.

(6) The contracting authority may, taking into account the principle of proportionality, exclude an undertaking from participating in a procurement procedure at any stage of the award procedure if:

1.

the company has demonstrably violated applicable environmental, social and labour law obligations in the execution of public contracts,

2.

the company is insolvent, insolvency proceedings or similar proceedings have been applied for or opened against the assets of the company, the opening of such proceedings has been refused due to lack of assets, the company is in the process of liquidation or has ceased its activities,

3.

the company has demonstrably committed serious misconduct in the course of its professional activities that calls into question the integrity of the company; § 6e EU paragraph 3 shall apply *mutatis mutandis*,

4.

the contracting authority has sufficient evidence that the undertaking has entered into agreements or concerted practices with other undertakings which have as their object or effect the prevention, restriction or distortion of competition;

5.

there is a conflict of interest in the conduct of the procurement procedure which could undermine the impartiality and independence of a person working for the contracting authority in the conduct of the procurement procedure and which cannot be effectively remedied by other, less restrictive measures,

6.

a distortion of competition results from the fact that the undertaking was already involved in the preparation of the award procedure and this distortion of competition cannot be eliminated by other, less restrictive measures,

7.

the undertaking has significantly or persistently deficienced an essential requirement in the performance of a previous public contract and this has led to premature termination, damages or a comparable legal consequence,

8.

the company has committed serious misrepresentation with regard to grounds for exclusion or suitability criteria, has withheld information or is unable to provide the necessary evidence, or

9.

The Company

a)

has attempted to influence the decision-making of the contracting authority in an undue manner;

b)

has attempted to obtain confidential information that could give it undue advantages in the procurement procedure, or

c)

negligently or intentionally provided misleading information that could significantly influence the contracting authority's award decision, or attempted to provide such information.

§ 6f EU

Self-purification

(1) Contracting authorities shall not exclude an undertaking in respect of which there is a ground for exclusion pursuant to Section 6e EU from participating in the award procedure if the undertaking has proven to the contracting authority or, pursuant to Section 8 of the Competition Register Act, to the Federal Cartel Office that:

1.

has paid compensation or undertaken to pay compensation for any damage caused by a criminal offence or misconduct,

2.

has fully clarified the facts and circumstances related to the offence or misconduct and the damage caused by it through active cooperation with the investigating authorities and the contracting authority, and

3.

has taken specific technical, organisational and personnel measures that are suitable to prevent further criminal offences or further misconduct.

§ 6e EU paragraph 4 sentence 2 shall remain unaffected.

2. The assessment of the self-cleaning measures taken by the undertaking shall take into account the seriousness and particular circumstances of the offence or misconduct. The decision that the company's self-cleaning measures are assessed as insufficient must be justified to the company.

(3) If an undertaking in respect of which there is a reason for exclusion does not take any or insufficient self-cleaning measures in accordance with paragraph 1, it may:

1.

if there is a reason for exclusion pursuant to Section 6e EU subsections 1 to 4, be excluded from participation in procurement procedures for a maximum period of five years from the date of the final conviction,

2.

if there is a reason for exclusion pursuant to Section 6e EU paragraph 6, be excluded from participation in procurement procedures for a maximum period of three years from the event in question.

§ 7 EU Specifications

(1)

1.

The service must be described unambiguously and so exhaustively that all applicants must understand the description in the same sense and can calculate their prices safely and without extensive preparatory work.

2.

In order to enable a flawless price determination, all circumstances influencing it must be determined and stated in the tender documents.

3.

The Contractor may not be burdened with an unusual risk for circumstances and events over which he has no influence and the impact of which he cannot estimate in advance on prices and deadlines.

4.

Requirement items are generally not to be included in the service description. Attached hourly wage work may only be included in the service description to the extent absolutely necessary.

5.

If necessary, the purpose and the intended use of the finished service must also be stated.

6.

The conditions of the construction site that are essential for the performance of the service, e.g. soil and water conditions, must be described in such a way that the applicant can adequately assess their effects on the structural system and the execution of the construction.

7.

The "Notes for the preparation of the service description" in Section 0 of the General Technical Contract Conditions for Construction Services, DIN 18299 et seq., must be observed.

2. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a particular production or origin or process characterising the products provided by a particular undertaking, or to trademarks, patents, types or a particular origin or production, where they favour or exclude certain undertakings or products. However, such references are permissible in exceptional cases if the subject matter of the contract cannot be described in a sufficiently precise and generally understandable manner; such references shall be accompanied by the addition "or equivalent".

(3) When describing the service, the customary designations shall be observed.

§ 7a EU

Technical specifications, test reports, certifications, quality marks

(1)

1.

The technical requirements (specifications – see Annex TS, point 1) for the subject matter of the contract must be equally accessible to all companies.

2.

The required characteristics may also relate to the specific process or method of producing or providing the requested services or to a specific process at another stage of the life cycle thereof, even if such factors are not tangible components of them, provided that they are related to the subject matter of the contract and are proportionate to its value and objectives.

3.

The technical specifications may indicate whether intellectual property rights need to be transferred.

4.

For any procurement intended for use by natural persons, whether by the general public or by the staff of the contracting authority, the technical specifications shall be drawn up in such a way as to take into account the criteria of accessibility for persons with disabilities or design for all users, except in duly justified cases.

5.

Where mandatory accessibility requirements are adopted by a legal act of the European Union, the technical specifications must refer to them as far as the criteria of accessibility for persons with disabilities or the design for all users are concerned.

(2) The technical specifications shall be formulated in the tender documents:

1.

either by reference to the technical specifications defined in Annex TS in order of precedence

a)
national standards implementing European standards;

b)
European technical assessments,

c)
common technical specifications,

d)
international standards and other technical reference systems developed by the European
standardisation bodies, or

e)
in the absence of such standards and specifications, national standards, national technical approvals
or national technical specifications for the planning, calculation and execution of works and the use
of products.

Each reference shall be accompanied by the addition "or equivalent";

2.
or in the form of performance or functional requirements which must be sufficiently precise to give
undertakings a clear picture of the subject matter of the contract and to enable the contracting
authority to award the contract;

3.
or in combination of numbers 1 and 2, i.e.

a)
in the form of performance or functional requirements by reference to the specifications referred to
in point 1 as a means of presuming conformity with those performance or functional requirements;

b)
or by reference to the specifications referred to in point 1 in respect of certain characteristics and by
reference to the performance or functional requirements referred to in point 2 in respect of other
characteristics.

(3)

1.
Where the contracting authority refers in the tender specifications to the specifications referred to in
paragraph 2(1), it may not reject a tender on the ground that the service offered does not correspond
to the specifications used, provided that the tenderer demonstrates in its tender to the contracting
authority that the solutions it proposes meet the requirements of the technical specification to which
reference has been made: equally. A test report or certification from an accredited conformity
assessment body may be considered a suitable means.

2.
A conformity assessment body within the meaning of this paragraph shall be accredited in
accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council.

3.

The contracting authority shall also accept other appropriate evidence, such as a technical description of the manufacturer, if:

a)

the company in question did not have access to the certificates or test reports mentioned, or

b)

the company concerned has not had the opportunity to obtain these certificates or test reports within the relevant time limits, unless the company concerned is not responsible for the lack of access

c)

and provided that it proves compliance with the specified requirements on the basis of this evidence.

4. Where the contracting authority establishes the technical specifications in the form of performance or functional requirements, it may comply with a tender which complies with a national standard transposing a European standard or with a European technical assessment, a common technical specification, an international standard or a technical reference system developed by the European standardisation bodies: if these specifications relate to the required performance or functional requirements. In its tender, the tenderer must prove to the contracting authority by appropriate means that the respective service complying with the standard meets the performance or functional requirements of the contracting authority. A technical description of the manufacturer or a test report from a conformity assessment body may be considered an appropriate means.

(5)

1.

In order to prove that a construction work meets certain characteristics required in the specifications, the contracting authority may require the submission of certificates, in particular test reports or certifications, from a conformity assessment body. If the submission of a certificate from a particular conformity assessment body is required, the contracting authority must also accept certificates from equivalent other conformity assessment bodies.

2.

The contracting authority shall also accept appropriate evidence other than that referred to in point 1, in particular a technical file from the manufacturer, where the undertaking has not had access to the certificates referred to in point 1 or has not had the opportunity to obtain them within the relevant time limits, unless the undertaking is responsible for the lack of access. In such cases, it is for the undertaking to demonstrate, by means of the evidence submitted, that the service to be provided by it meets the specific requirements specified by the contracting authority.

3.

A conformity assessment body is a body which, in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 laying down the requirements for accreditation and market surveillance relating to the marketing of products and repealing Council Regulation (EEC) No 339/93 (OJ 2008 L 339, p. OJ L 218, 13.8.2008, p. 30) and carries out conformity assessment activities.

(6)

1.

The contracting authority may require a specific quality mark for services with specific environmental, social or other characteristics in the technical specifications, award criteria or conditions of performance as proof that the services meet the required characteristics, provided that all the following conditions are met:

a)

the quality mark requirements relate only to criteria that are related to the subject matter of the contract and are suitable for determining the characteristics of the object of the contract;

b)

the quality mark requirements are based on objectively verifiable and non-discriminatory criteria;

c)

the labels will be introduced through an open and transparent process in which all relevant stakeholders, such as public authorities, consumers, social partners, manufacturers, distributors and non-governmental organisations, can participate;

d)

the quality marks are accessible to all interested parties;

e)

the requirements for the quality marks are determined by a third party over whom the entrepreneur applying for the quality mark cannot exert any significant influence.

2.

In the event that the service does not have to comply with all the requirements of the label, the contracting authority must specify the relevant requirements.

3.

The contracting authority accepts other quality marks that impose equivalent requirements on performance.

4.

If, for reasons not attributable to it, an undertaking demonstrably did not have the opportunity to obtain the label indicated by the contracting authority or an equivalent label within the relevant time limits, the contracting authority must accept other appropriate evidence, provided that the undertaking demonstrates that the service to be provided by it meets the requirements of the required label or the specific standards specified by the contracting authority. Requirements.

§ 7b EU

Service description with service specification

(1) As a rule, the service shall be described by a general description of the construction task (building description) and a list of services divided into partial services.

(2) If necessary, the service shall also be represented in drawings or by means of test specimens or explained in another way, e.g. by references to similar services, by quantity or static calculations. Drawings and samples that are to be decisive for the execution must be clearly identified.

(3) Services which are part of the required service according to the terms and conditions of the contract, the technical terms of the contract or commercial custom (§ 2 (1) VOB/B) do not need to be specifically listed.

(4) In the list of services, the service shall be broken down in such a way that only those services are included under an ordinal number (item) which are to be regarded as similar in terms of their technical characteristics and for the purpose of pricing. Dissimilar services are to be combined under an atomic number (collective item) only if one partial service has no significant influence on the formation of an average price compared to another.

§ 7c EU

Service description with service program

(1) If, after weighing up all the circumstances, it is expedient, by way of derogation from § 7b EU subsection 1, to submit the design for the service to competition together with the execution of the construction in order to determine the best technically, economically and creatively best and most functionally appropriate solution for the construction task, the service may be represented by a service programme.

(2)

1.

The service programme shall include a description of the construction task, from which the undertakings shall be able to identify all the conditions and circumstances relevant to the preparation of the design and its tender, and in which both the purpose of the finished service and the technical, economic, design and functional requirements placed on it shall be indicated, as well as, where appropriate, a model list of services, in which the quantities are wholly or partially left open.

2.

Section 7b EU subsections 2 to 4 shall apply mutatis mutandis.

(3)

1.

The tenderer shall be required to submit an offer which, in addition to the performance of the service, shall include the design together with a detailed explanation and a description of the construction work as well as a detailed and appropriately structured description of the service – if necessary with quantities and prices for parts of the service. If the service is described with quantities and prices, the tenderer must be required to

2.

represents the completeness of its information, in particular the quantities determined by itself, either without restriction or within the framework of a quantity tolerance to be specified in the tender documents, and

3.

any assumptions that it is forced to make in special cases because at the time of submission of the tender individual partial services cannot yet be determined in terms of type and quantity (e.g. excavation, demolition or dewatering work) – if necessary on the basis of plans and quantity determinations.

§ 8 EU

Procurement documents

(1) The tender documents shall consist of:

1.

the cover letter (invitation to submit an offer in accordance with subsection 2 nos. 1 to 3), if applicable, conditions of participation (subsection 2 no. 6) and

2.

the contract documents (§ 8a EU and §§ 7 EU to 7c EU).

(2)

1.

The cover letter shall contain the information specified in column 16 of Table 2 of the Annex to Implementing Regulation (EU) 2019/1780 which, in addition to the contractual documents, is necessary for the decision to submit a tender, if it has not already been published.

2.

In the tender documents, the contracting authority may invite the tenderer to indicate in its tender the services which it intends to subcontract to third parties and the subcontractors, if any, proposed, with their names, legal representatives and contact details.

3.

The contracting authority may allow or require ancillary tenders in the contract notice or in the invitation to confirm interest. If no corresponding information is provided, no ancillary offers are permitted. Ancillary offers must be related to the subject matter of the contract. If the contracting authority has permitted or required ancillary tenders in the contract notice or in the invitation to confirm interest, it must state:

a)

the manner in which ancillary tenders are to be submitted, in particular whether, by way of exception, it admits ancillary tenders only in connection with a main tender,

b)

the minimum requirements for ancillary offers.

The award criteria shall be defined in such a way that they are applicable to both main tenders and ancillary tenders. It is also permissible for the price to be the only award criterion.

Bidders who offer a service the execution of which is not regulated in the General Technical Terms and Conditions or in the tender documents must be required in the tender to provide appropriate information on the execution and quality of this service.

4.

The contracting authority may indicate in the contract notice or in the invitation to confirm interest that it does not allow the submission of several main tenders.

5.

The contracting authority must conclusively specify all documents within the meaning of Section 16a EU paragraph 1 with the exception of product information at a central location in the tender documents.

6.

Public contracting authorities that regularly award construction contracts should summarise the requirements that the companies must comply with when processing their tenders in the conditions of participation and attach them to the cover letter.

§ 8a EU

General, Special and Additional Terms and Conditions

(1) The tender documents shall stipulate that the General Terms and Conditions of Contract for the Execution of Construction Services (VOB/B) and the General Technical Terms and Conditions of Contract for Construction Services (VOB/C) shall become part of the contract. This also applies to any Additional Terms and Conditions of Contract and any Additional Technical Terms and Conditions of the Contract, insofar as they are to become part of the Agreement.

(2)

1.

The General Terms and Conditions of Contract remain unchanged in principle. They may be supplemented by additional contractual conditions by contracting authorities which regularly award works contracts for the general conditions prevailing in their case. These must not contradict the General Terms and Conditions of Contract.

2.

For the requirements of the individual case, the General Terms and Conditions of Contract and any Additional Terms and Conditions of Contract shall be supplemented by Special Terms and Conditions. In these, deviations from the General Terms and Conditions of Contract are to be limited to cases in which special agreements are expressly provided for therein and only to the extent required by the specific nature of the service and its execution.

(3) The General Technical Terms and Conditions of Contract shall remain unchanged in principle. They may be supplemented by additional technical contract conditions by contracting authorities which regularly award works contracts for the general conditions prevailing in their case. For the requirements of the individual case, additions and changes must be specified in the service description.

(4)

1.

The Additional Terms and Conditions of Contract or the Special Conditions of Contract shall regulate, where necessary, the following:

a)

documents (§ 8b EU paragraph 2; § 3 paragraphs 5 and 6 VOB/B),

b)

Use of storage and work areas, access roads, sidings, water and energy connections (§ 4 paragraph 4 VOB/B),

c)

subcontracting to subcontractors (Section 4 (8) VOB/B),

d)

Execution deadlines (§ 9 EU; § 5 VOB/B),

e)

Liability (Section 10 (2) VOB/B),

f)

contractual penalties and acceleration payments (§ 9a EU; § 11 VOB/B),

g)

Acceptance (§ 12 VOB/B),

h)

Type of contract (§§ 4 EU, 4a EU), billing (§ 14 VOB/B),

i)

Hourly wage work (§ 15 VOB/B),

j)

Payments, advance payments (§ 16 VOB/B),

k)

Provision of security (§ 9c EU; § 17 VOB/B),

l)

Place of jurisdiction (Section 18 (1) VOB/B),

m)

non-wage and non-salary costs,

n)

Change in contract prices (§ 9d EU).

2.

Special agreements required in individual cases on the claims for defects and their statute of limitations (§ 9b EU; § 13 paragraphs 1, 4 and 7 VOB/B) and on the distribution of the risk in the event of damage that may occur due to flooding, storm surges, groundwater, wind, snow, ice and the like (§ 7 VOB/B) must be made in the Special Terms and Conditions of Contract. If the same conditions within the meaning of § 9b EU are met for certain construction services, the special agreements may also be provided for in Additional Technical Contract Conditions.

§ 8b EU

Settlement of costs and trusts, arbitration proceedings

(1)

1.

No compensation will be granted for the processing of the offer. However, if the contracting authority requires the undertaking to prepare drafts, plans, drawings, static calculations, quantity calculations or other documents, in particular in the cases referred to in Paragraph 7c EU, appropriate compensation shall be fixed uniformly for all tenderers in the invitation to tender. This compensation is due to every bidder who has submitted a bid in accordance with the invitation to tender with the required documents in good time.

2.

These principles apply mutatis mutandis to negotiated procedures, competitive dialogues and innovation partnerships.

(2) The contracting authority may use tender documents and a tenderer's own proposals contained in the tenders only for the examination and evaluation of the tenders (Sections 16c EU and 16d EU). Any use beyond this period requires prior written agreement.

(3) If disputes arising from the contract are to be settled in arbitration proceedings to the exclusion of ordinary legal recourse, it shall be agreed in a special document relating only to the arbitration proceedings, unless Section 1031 (2) of the Code of Civil Procedure also permits another form of agreement.

§ 8c EU

Requirements for energy-related goods, technical devices or equipment

(1) If the supply of energy-related goods, technical devices or equipment is an essential part of a construction work, the requirements of paragraphs 2 to 4 must be observed.

(2) The specifications shall in particular set the following requirements with regard to energy efficiency:

1.

the highest level of energy efficiency and

2.

if available, the highest energy efficiency class within the meaning of the Energy Consumption Labelling Ordinance.

(3) In the tender specifications or elsewhere in the tender documents, tenderers shall be required to provide the following information:

1.

specific information on energy consumption, unless the goods, technical devices or equipment offered on the market differ only slightly in terms of permissible energy consumption, and

2.

in appropriate cases,

a)

an analysis of minimized life cycle costs, or

b)

the results of a similar cost-effectiveness verification methodology (a).

(4) If energy-consuming goods, technical devices or equipment are an essential part of a construction work and if not only minor differences in energy consumption are to be expected beyond the minimum requirements with regard to energy efficiency set out in the specifications, the award criterion "energy efficiency" shall be taken into account.

§ 9 EU

Execution deadlines, individual deadlines, delay

(1)

1.

The execution deadlines must be sufficient; The season, working conditions and any particular difficulties must be taken into account. The contractor must be given sufficient time to prepare for construction.

2.

Exceptionally short deadlines are to be provided for only in cases of particular urgency.

3.

If it is to be agreed that execution is not to begin until requested (Section 5 (2) VOB/B), the period within which the request can be issued must be reasonable, taking into account the circumstances governing the execution; it shall be specified in the tender documents.

(2)

1.

If it requires a significant interest on the part of the contracting authority, individual deadlines must be determined for self-contained parts of the service.

2.

If a construction schedule is drawn up so that the services of all companies are safely intertwined, only the individual deadlines that are particularly important for the progress of the overall work should be designated as contractually binding deadlines (contractual deadlines).

(3) If the handing over of drawings or other documents is important for compliance with execution deadlines, a deadline shall also be set for this.

(4) The contracting authority may provide for a lump-sum calculation of the damage caused by delay (Section 5 (4) VOB/B) in the contract documents; it should not exceed five percent of the contract amount. Proof of lesser damage must be admitted.

§ 9a EU

Contractual penalties, acceleration remuneration

Contractual penalties for exceeding contractual deadlines are only to be agreed if the exceeding can cause significant disadvantages. The penalty shall be kept within reasonable limits. Acceleration payments (premiums) are only to be provided if completion before the expiry of the contract deadlines brings significant advantages.

§ 9b EU

Verjährung der Mängelansprüche

Limitation periods other than those under Section 13 (4) VOB/B are to be provided for only if this is necessary due to the nature of the service. In such cases, all circumstances must be weighed against each other, in particular when any defects are likely to become apparent and to what extent the causes of the defects can still be proven, but also the effect on prices and the need for an equitable assessment of the limitation periods for claims for defects.

§ 9c EU

Guarantee

(1) The provision of security shall be waived in whole or in part if defects in the performance are unlikely to occur. If the contract sum is less than 250,000 euros excluding VAT, the provision of security for the performance of the contract and, as a rule, the provision of security for the claims for defects must be waived. In restricted procedures as well as in negotiated procedures and competitive dialogues, security deposits should not be required as a rule.

(2) The security shall not be assessed at a higher level and its return shall not be provided for at a later date than is necessary to protect the contracting authority from damage. The security for the fulfilment of all obligations under the contract should not exceed five percent of the contract amount. The security for claims for defects should not exceed three percent of the settlement amount.

§ 9d EU Änderung der Vergütung

If significant changes in the basis of price determination are to be expected, the occurrence or extent of which is uncertain, an appropriate change in the remuneration may be provided for in the contract documents. The details of the price changes should be determined.

§ 10 EU Deadlines

1. In setting the deadlines for receipt of tenders (tender deadline) and requests for participation (participation deadline), the contracting authority shall take into account the complexity of the contract and the time required to prepare the tenders (reasonableness). The reasonableness of the time limit is assessed separately by the contracting authority in each individual case. The minimum periods mentioned below are subject to reasonableness.

2. Where tenders can be drawn up only after an on-site inspection or inspection of documents which have not been sent, longer deadlines shall be laid down than the minimum deadlines to enable all undertakings to become aware of all the information necessary for the preparation of the tender.

§ 10a EU Deadlines in open proceedings

(1) In the case of an open procedure, the tender period shall be at least 35 calendar days, calculated from the day after the contract notice has been sent.

(2) The tender period may be shortened to 15 calendar days from the day after the contract notice has been sent. The prerequisite for this is that a prior information notice in accordance with the prescribed model pursuant to Section 12 EU (1) number 2 has been sent to the Publications Office of the European Union at least 35 calendar days, but no more than twelve months before the date of dispatch of the contract notice. This prior information notice shall contain at least the information required in the model contract notice referred to in Part C of Annex V to Directive 2014/24/EU for the open procedure, provided that this information was available at the time the prior information was sent.

(3) In the event that a matter of urgency duly justified by the contracting authority makes it impossible to comply with the time limit referred to in paragraph 1, the contracting authority may set a time limit not less than 15 calendar days from the day following the date of dispatch of the contract notice.

(4) The tender period pursuant to subsection (1) may be shortened by five calendar days if the electronic transmission of the tenders pursuant to Section 11 EU subsection (4) is accepted.

(5) If, for the reasons set out in Paragraph 11b EU, free of charge, unrestricted and full direct access to certain procurement documents cannot be offered, the contract notice may state that the relevant tender documents will not be transmitted electronically but by other means in accordance with Paragraph 11b EU(1), or what measures are required to protect the confidentiality of the information and how the documents in question are can be accessed.

In such a case, the tender period shall be extended by five calendar days, except in the case of duly justified urgency in accordance with paragraph 3.

6. In the following cases, the contracting authority shall extend the deadlines for receipt of tenders so that all the undertakings concerned may have knowledge of all the information necessary for the preparation of the tender:

1.

if additional information requested in good time cannot be made available to all undertakings in the same way at the latest six calendar days before the expiry of the tender period. In the case of accelerated procedures (urgency) within the meaning of paragraph 3, this period shall be four calendar days;

2.

if significant changes are made to the tender documents.

The extension of the deadline must be proportionate to the importance of the information or changes.

If the additional information was either not requested in good time or if its significance for the preparation of admissible tenders is irrelevant, the contracting authority is not obliged to extend the deadlines.

(7) Tenders in text form may be withdrawn until the expiry of the tender period.

(8) The contracting authority shall determine a reasonable period within which tenderers are bound by its bids (binding period). This should be as short as possible and not longer than the contracting authority needs for a speedy examination and evaluation of the bids (§§ 16 EU to 16d EU). The

binding period is usually 60 calendar days. In justified cases, the contracting authority may set a longer deadline. The end of the binding period shall be indicated by indicating the calendar day.

(9) The binding period begins with the expiry of the tender period.

§ 10b EU **Deadlines in restricted proceedings**

(1) In the case of restricted procedures, the deadline for participation shall be at least 30 calendar days, calculated from the day after the announcement of the contract or the invitation to confirm interest has been sent.

(2) The tender period shall be at least 30 calendar days, calculated from the day after the invitation to tender has been sent.

(3) The tender period pursuant to subsection (2) may be shortened to ten calendar days from the day after the invitation to tender has been sent. The prerequisite for this is that a prior information notice in accordance with the prescribed model pursuant to Section 12 EU (1) number 2 has been sent to the Publications Office of the European Union at least 35 calendar days, but no more than twelve months before the date of dispatch of the contract notice. This prior information notice shall contain at least the information required in the model contract notice referred to in Part C of Annex V to Directive 2014/24/EU for the restricted procedure, provided that this information was available at the time the prior information was sent.

(4) The tender period pursuant to subsection (2) may be shortened by five calendar days if the electronic transmission of the tenders pursuant to Section 11 EU (4) is accepted.

(5) For reasons of urgency,

1.

the period for participation shall be at least 15 calendar days from the day following the dispatch of the contract notice,

2.

the tender period shall be at least ten calendar days from the day following the dispatch of the invitation to tender

be shortened.

6. The contracting authority shall extend the tender deadline in the following cases so that all the undertakings concerned may have knowledge of all the information necessary for the preparation of the tender:

1.

if additional information requested in good time cannot be made available to all undertakings in the same way at the latest six calendar days before the expiry of the tender period. In the case of accelerated procedures within the meaning of paragraph 5, this period shall be four calendar days;

2.

if significant changes are made to the tender documents.

The extension of the deadline must be proportionate to the importance of the information or changes.

If the additional information was either not requested in good time or if its significance for the preparation of admissible tenders is irrelevant, the contracting authority is not obliged to extend the deadlines.

(7) Tenders in text form may be withdrawn until the expiry of the tender period.

(8) The contracting authority shall determine a reasonable period within which tenderers are bound by its bids (binding period). This should be as short as possible and not longer than the contracting authority needs for a speedy examination and evaluation of the bids (§§ 16 EU to 16d EU). The binding period is usually 60 calendar days. In justified cases, the contracting authority may set a longer deadline. The end of the binding period shall be indicated by indicating the calendar day.

(9) The binding period shall commence on the expiry of the tender period.

§ 10c EU

Deadlines in the negotiated procedure

(1) In the negotiated procedure with participation competition, the procedure shall be in accordance with §§ 10 EU and 10b EU.

(2) In the case of a negotiated procedure without a competitive bidding process, a sufficient tender period of no less than ten calendar days shall be provided for the processing and submission of tenders, even if there is urgency. In particular, the additional effort for visiting construction sites or obtaining documents for the processing of bids must be taken into account. The procedure shall be in accordance with § 10b EU paragraphs 7 to 9.

§ 10d EU

Deadlines in the competitive dialogue and innovation partnership

In the case of competitive dialogue and innovation partnerships, the deadline for participation is at least 30 calendar days, calculated from the day after the contract notice has been sent. Section 10b EU paragraphs 7 to 9 shall apply mutatis mutandis.

§ 11 EU

Grundsätze der Informationsübermittlung

- (1) For the sending, receiving, forwarding and storing of data in a procurement procedure, the contracting authority and the undertakings shall in principle use devices and programs for the electronic transmission of data (electronic means).
- (2) Contract notices, preliminary information pursuant to Section 12 EU (1) or (2), contract notices and notices of contract changes (notices) shall be transmitted electronically to the Publications Office of the European Union via the Central Public Procurement Data Service. The contracting authority must be able to prove the date of dispatch.
- (3) In the contract notice or the invitation to confirm interest, the contracting authority shall provide an electronic address at which the tender documents may be consulted free of charge, without restriction, in full and directly.
- (4) The undertakings shall submit their offers, requests to participate, expressions of interest and confirmations of interest in text form by electronic means.
- (5) The contracting authority shall examine on a case-by-case basis whether data to be transmitted impose increased security requirements. Where necessary, the contracting authority may require that tenders, requests to participate, confirmations of interest and expressions of interest be accompanied by:
 1.
einer fortgeschrittenen elektronischen Signatur,
 2.
einer qualifizierten elektronischen Signatur,
 3.
einem fortgeschrittenen elektronischen Siegel oder
 4.
einem qualifizierten elektronischen Siegel.
- (6) The contracting authority may require each undertaking to provide a unique company name and an electronic address (registration). The contracting authority may not require registration to access the contract notice and the tender documents. Voluntary registration is permitted.

(7) Communication in an award procedure may take place orally if it does not relate to the procurement documents, the applications to participate, the confirmations of interest or the tenders and if it is sufficiently and appropriately documented.

§ 11a EU
Requirements for electronic means

(1) Electronic means and their technical characteristics must be widely available, non-discriminatory and compatible with commonly used information and communication technology equipment and programs. They must not restrict companies' access to the procurement procedure. The contracting authority shall ensure that electronic resources are designed to be barrier-free in accordance with §§ 4, 12a and 12b of the Disability Equality Act of 27 April 2002 (Federal Law Gazette I pp. 1467, 1468) in the applicable version.

(2) For the sending, receiving, forwarding and storage of data in a procurement procedure, the contracting authority shall use only electronic means which guarantee the integrity, confidentiality and authenticity of the data.

(3) The contracting authority shall provide undertakings with all necessary information on:

1.
the electronic means used in a procurement procedure,
2.
the technical parameters for the submission of applications to participate, offers and confirmations of interest by electronic means, and
3.
encryption and time recording methods used.

(4) The contracting authority shall determine the required level of security for the electronic means. Electronic means used by the contracting authority to receive tenders, requests to participate and confirmations of interest, as well as plans and designs for design competitions, must ensure that:

1.
the time and day of data receipt must be precisely determined,
2.
no early access to the received data is possible,
3.
the date for the first access to the received data can only be set or changed by the authorized persons,

4.

only the authorized persons have access to the received data or to part of it,

5.

only the entitled parties may grant third parties access to the received data or to part of it after the specified date,

6.

data received is not transmitted to unauthorised persons and

7.

violations or attempted violations of the requirements set out in points 1 to 6 can be clearly identified.

(5) The electronic means used by the contracting authority for the receipt of tenders, requests to participate and confirmations of interest, as well as plans and designs for planning competitions, shall have a uniform data exchange interface. The applicable interoperability and security standards for information technology in accordance with § 3 (1) of the Treaty on the Establishment of the IT Planning Council and on the Foundations of Cooperation in the Use of Information Technology in the Administrations of the Federation and the Länder of 1 April 2010 shall be used.

(6) The contracting authority may, in the course of the procurement procedure, require the use of electronic means which are not generally available (alternative electronic means) if:

1.

grants undertakings free, unrestricted, complete and direct access to these alternative electronic means at one internet address throughout the procurement procedure, and

2.

uses these alternative electronic means itself.

(7) The contracting authority may require the use of electronic means in the context of building information modelling for the award of construction services and for competitions. Where the required electronic means for building information modelling are not widely available, the contracting authority shall offer alternative access to them in accordance with paragraph 6.

§ 11b EU

Exemptions from the use of electronic means

(1) The contracting authority may transmit the procurement documents by another appropriate means if the necessary electronic means for retrieving the procurement documents

1.

are not compatible with generally available or widely used information and communication technology equipment and programs due to the special nature of the awarding of contracts,

2.

Use file formats to describe the offers that cannot be processed with generally available or widely used programs or that are protected by licenses other than free and generally available, or

3.

require the use of office equipment that is not generally available to contracting authorities.

In these cases, the tender period shall be extended by five calendar days, unless there is a case of duly justified urgency pursuant to Section 10a EU (3) or Section 10b EU (5).

(2) In the cases referred to in Paragraph 5(3) of the VgV, the contracting authority shall indicate in the contract notice or in the request for confirmation of interest what measures it is applying to protect the confidentiality of information and how the procurement documents may be accessed. The tender period shall be extended by five calendar days, unless there is a case of duly justified urgency pursuant to Section 10a EU (3) or Section 10b EU (5).

(3) The contracting authority shall not be obliged to require the submission of tenders by electronic means if one of the reasons referred to in points 1 to 3 of paragraph 1 applies to the electronic means required for submission or if physical or scale models must be submitted at the same time which cannot be transmitted electronically. In these cases, communication is by post or by other suitable means or in combination with postal or other suitable means and use of electronic means. In the award notice, the contracting authority shall indicate the reasons why tenders may be submitted by means other than electronic means.

(5) The contracting authority may stipulate that tenders shall be submitted by means other than electronic means if they contain data that are particularly worthy of protection which cannot be adequately protected by the use of generally available or alternative electronic means, or if the security of the electronic means cannot be guaranteed. The contracting authority shall state in the tender note the reasons why it considers it necessary to submit tenders by means other than electronic.

§ 12 EU

Prior information, contract notice, ex-ante notice

(1)

1.

The intention to award a planned contract may be announced by means of a prior information document containing the essential characteristics of the intended works contract.

2.

Prior information is only mandatory if the contracting authority wishes to make use of the possibility of shortening the tender period pursuant to Section 10a EU (2) or Section 10b EU (3). In this case, the

prior information shall be prepared in accordance with the requirements of column 7 in Table 2 of the Annex to Implementing Regulation (EU) 2019/1780 in conjunction with Section 10a VgV.

3.

Prior information for information purposes only must be prepared in accordance with the requirements of column 4 in Table 2 of the Annex to Implementing Regulation (EU) 2019/1780 in conjunction with Section 10a VgV.

4.

Once the planning has been approved, the prior information must be submitted to the Publications Office of the European Union as soon as possible via the Central Public Procurement Data Service or published in the procurer profile; in this case, the announcement of this publication must be notified to the Publications Office of the European Union in advance via the Central Public Procurement Data Service in accordance with the requirements of column 1 in Table 2 of the Annex to Implementing Regulation (EU) 2019/1780 in conjunction with Section 10a VgV. The date of transmission must be indicated. The prior information may also be published in daily newspapers, official publications or Internet portals.

(2)

1.

In the case of restricted and negotiated procedures, a sub-centralised contracting authority may publish prior information as a call for competition, provided that the prior information meets all of the following conditions:

a)

it relates specifically to the subject matter of the contract to be awarded;

b)

it must state that the contract will be awarded by restricted or negotiated procedure, without a subsequent publication of a call for competition, and an invitation to the interested undertakings to indicate their interest;

c)

it must be prepared in accordance with the requirements of column 10 in Table 2 of the Annex to Implementing Regulation (EU) 2019/1780 in conjunction with Section 10a VgV;

d)

it must have been submitted to the Publications Office of the European Union for publication no later than 35 calendar days and at the earliest twelve months before the date of sending the invitation to confirm interest.

Such prior information is not published in a procurer profile. However, where appropriate, additional publication at national level may be made in a procurer profile in accordance with paragraph 3(5).

2.

The provisions of subsection 3 numbers 3 to 5 shall apply mutatis mutandis.

3.

Sub-centralised public contracting authorities are all public contracting authorities with the exception of the highest federal authorities.

(3)

1.

The companies must be invited to participate in the competition by means of a contract notice. This shall apply to all types of award pursuant to § 3 EU, with the exception of negotiated procedures without a competitive bidding process and procedures in which prior information has been provided as a call for competition pursuant to subsection (2).

2.

The contract notice shall be prepared in accordance with the requirements of column 16 in Table 2 of the Annex to Implementing Regulation (EU) 2019/1780 in conjunction with Section 10a VgV and shall be submitted electronically to the Publications Office of the European Union via the Central Public Procurement Data Service.

3.

The contract notice shall be published free of charge in the original language five calendar days after it has been sent. A summary of the main information is published in the other official languages of the European Union; the wording of the original language is authentic.

4.

The contracting authority must be able to prove the date on which the contract notice was sent. The Publications Office of the European Union shall issue to the contracting authority a confirmation of receipt of the contract notice and of publication of the information transmitted, indicating the date of such publication. This confirmation serves as proof of publication.

5.

The contract notice may also be published in Germany, for example in daily newspapers, official publications or Internet portals. It may contain only the information which has been transmitted to the Publications Office of the European Union and must indicate the date of transmission. It may not be published before publication by this Office. However, publication at national level may in any event take place if the contracting authority has not been informed of the publication within 48 hours of acknowledgment of receipt of the contract notice referred to in point 4.

(4) The voluntary ex-ante transparency announcement within the meaning of section 135 (3) sentence 1 number 2 and sentence 2 of the Act against Restraints of Competition shall be made in accordance with the requirements of column 25 in Table 2 of the Annex to Implementing Regulation (EU) 2019/1780 in conjunction with § 10a VgV.

§ 12a EU

Dispatch of procurement documents

(1)

1.

The tender documents shall be offered free of charge with unrestricted and complete direct access by electronic means from the date of publication of a contract notice pursuant to Section 12 EU (3) or the date of the invitation to confirm interest pursuant to number 3. The contract notice or the request for confirmation of interest must contain the internet address from which these tender documents can be accessed.

2.

This obligation does not apply in the cases referred to in § 11b EU subsection 1.

3.

In the case of restricted procedures, negotiated procedures, competitive dialogues and innovation partnerships, all selected applicants will be invited to participate in the competition at the same time in text form or, if a prior information notice has been used as a call for competition in accordance with Section 12 EU paragraph 2, they will be asked to confirm their interest.

The invitations contain a reference to the electronic address through which the tender documents are made available directly electronically.

For the reasons set out in point 2, the procurement documents must be attached to the requests, unless they have already been made available in another way.

(2) The names of the undertakings which have received or inspected procurement documents shall be kept secret.

(3) Information on the tender documents requested in good time shall be provided to all undertakings in the same manner no later than six calendar days before the expiry of the tender period. In the case of accelerated procedures pursuant to Section 10a EU (2) and Section 10b (EU) (5), this period shall be four calendar days.

§ 13

Form and content of the offers

(1)

1.

The contracting authority shall determine the form in which the tenders are to be submitted, taking into account § 11 EU. Written offers must be signed. Tenders submitted electronically shall be provided at the discretion of the contracting authority with

a)
an advanced electronic signature,

b)
a qualified electronic signature,

c)
an advanced electronic seal, or

d)
a qualified electronic seal,

provided that the contracting authority has requested this in individual cases in accordance with Section 11 EU.

2.

The contracting authority must guarantee the data integrity and confidentiality of the tenders in accordance with Section 11a EU paragraph 2.

Tenders submitted by post or directly must be submitted in a sealed envelope, marked as such and kept under lock and key until the deadline for submission has expired. In the case of electronically transmitted tenders, this must be ensured by appropriate technical solutions in accordance with the requirements of the contracting authority and by encryption. The encryption must be maintained until the first offer opens.

3.

The offers must include the required prices.

4.

The offers must contain the required declarations and evidence.

5.

The tender shall be prepared on the basis of the tender documents. Changes to the tender documents are not permitted. Changes made by the bidder to his entries must be beyond doubt.

6.

Bidders may use a copy or summary of the tender specifications prepared by themselves for the submission of tenders if they accept the wording of the tender specifications drawn up by the contracting authority in the tender as the only binding one; However, abstracts must reproduce the ordinal numbers (items) in full, in the same order and with the same numbers as in the list of services drawn up by the contracting authority.

7.

Samples and samples of the bidders must be marked as belonging to the tender.

(2) A service which deviates from the technical specifications provided for in Paragraph 7a(1)(1) of the EU may be offered if it is equivalent to the required level of protection in terms of safety, health and fitness for use. The deviation must be clearly indicated in the tender. Equivalence must be proven with the tender.

(3) The number of ancillary tenders shall be listed in a place designated by the contracting authority in the tender documents. Any ancillary offers must be prepared on a special annex and clearly marked as such. If several main bids are submitted, each must be eligible for award on its own.

Paragraph 1 number 2 sentence 2 shall apply mutatis mutandis to each main tender.

(4) Where price reductions are granted without conditions, they shall be listed in a place designated by the contracting authority in the tender documents.

(5) Bidding consortia shall appoint the members and designate one of their members as an authorised representative for the conclusion and performance of the contract. If the name of the authorised representative is missing from the tender, it must be provided before the contract is awarded.

(6) The contracting authority shall include the requirements for the content of the tenders referred to in paragraphs 1 to 5 in the tender documents.

§ 14 EU

Opening of the offers, opening date

(1) The opening of tenders shall be carried out jointly by at least two representatives of the contracting authority on one date (opening date) immediately after the expiry of the tender period. Until this date, the electronic offers must be labelled and stored in encrypted form. Offers received by post or directly must be marked with a note of receipt on the unopened envelope and kept under lock and key.

(2)

1.

The negotiator determines whether the seal of the written offers is intact and whether the electronic offers are encrypted.

2.

The offers will be opened and marked in all essential parts on the opening date.

3.

Samples and samples of the bidders must be on hand at the appointment.

(3) A transcript of the opening date shall be prepared in text form in which the two representatives of the contracting authority shall be named. The minutes must be accompanied by a list with the following information:

- a)
the name and address of the bidders,
- b)
the final amounts of the offers or individual lots,
- c)
unconditional discounts,
- d)
Number of respective ancillary offers.

(4) Tenders received after the expiry of the tender period shall be specifically listed in the minutes or in a supplement. The times of receipt and any known reasons for which the offers were not available must be noted. The envelope and other evidence must be kept.

(5) A tender which can be shown to have been received by the contracting authority before the expiry of the tender period, but which was not submitted to the negotiator, shall be recorded in the minutes or in an addendum with all the information. The bidders must be informed of this fact immediately in text form. The notification shall state whether the seal was intact in the case of written tenders or, in the case of electronic tenders, whether they were encrypted, and include the information referred to in subparagraph 3(a) to (d). In all other respects, subsection 4 sentences 2 and 3 shall apply.

6. In open and restricted procedures, the contracting authority shall immediately make available to tenderers electronically the information referred to in points (a) to (d) of paragraph 3. The bidders and their authorised representatives shall be permitted to inspect the minutes and their supplements (subsections 4 and 5 and § 16c EU subsection 3).

(7) The minutes may not be published.

(8) The offers and their annexes are to be carefully stored and kept secret.

§ 15 EU

Clarification of the content of the offer

(1)

1.

In open and restricted procedures, the contracting authority may, after the tenders have been opened until the contract has been awarded, require information from a tenderer only in order to ascertain its suitability, in particular its technical and economic capacity, the tender itself, any ancillary tenders, the planned method of implementation, any places of origin or sources of supply of

materials or components, and the reasonableness of the prices, if necessary, by inspecting the price determinations (calculations) to be submitted.

2.

The results of such investigations are to be kept secret. They are to be set down in text form.

(2) If a bidder refuses to provide the required clarifications and information, or if he allows the reasonable period set for him to elapse unanswered, his bid shall be excluded.

(3) Negotiations in open and restricted procedures, in particular on changes to offers or prices, shall be inadmissible, except if they are necessary in the case of ancillary offers or offers based on a service programme in order to agree on unavoidable technical changes of minor scope and resulting changes in prices.

(4) The contracting authority may review information submitted in accordance with Section 8c EU (3) and request additional explanations from the tenderers.

§ 16 EU

Exclusion of offers

The following are to be excluded:

1.

Tenders that have not been received by the deadline,

2.

Tenders that do not comply with the provisions of Section 13 EU paragraph 1 numbers 1, 2 and 5,

3.

Tenders that do not contain the required documents within the meaning of Section 8 EU (2) number 5 if the contracting authority has determined in accordance with Section 16a EU (3) that it will not request any additional documents. Sentence 1 shall apply mutatis mutandis to applications to participate,

4.

Tenders in respect of which the tenderer has not submitted declarations or evidence which the contracting authority has reserved the right to provide, upon request, within a reasonable period determined in accordance with the calendar. Sentence 1 shall apply mutatis mutandis to applications to participate,

5.

non-permitted ancillary offers as well as ancillary offers that do not meet the minimum requirements,

6.

main tenders submitted by tenderers who have submitted several main tenders, where the contracting authority has not authorised the submission of several main tenders in the contract notice or in the invitation to confirm interest;

7.

Ancillary offers that do not comply with Section 13 EU (3) sentence 2,

8.

Main offers that do not comply with Section 13 EU (3) sentence 3.

§ 16a EU

Now of documents

1. The contracting authority shall, in compliance with the principles of transparency and equal treatment, invite tenderers who are eligible for the award of the contract to submit, complete or correct missing, incomplete or incorrect business-related documents, in particular declarations, information or evidence, or to submit missing or incomplete performance-related documents, in particular declarations, product and other information or evidence: (additional claim), unless he has made use of his right under subsection 3. Only documents that were already to be submitted with the offer are to be requested.

(2) Missing price information may not be requested later. Bids that do not comply with the provisions of Section 13 EU paragraph 1 number 3 are to be excluded. This does not apply to tenders in which the price is only missing in insignificant items and the competition and the order of evaluation are not impaired by the disregard of these items or in which these items are evaluated with the highest competitive price in each case. In this case, only the price is taken into account without taking into account any ancillary offers. The contracting authority shall invite the tenderer to complete the missing price items in accordance with paragraph 1. Sentences 3 to 5 shall not apply if the contracting authority has excluded the subsequent request for price information in accordance with paragraph 3.

(3) The contracting authority may stipulate in the contract notice or the tender documents that it will not request any additional documents or price information.

4. The documents or missing price indications shall be submitted by the candidate or tenderer at the request of the contracting authority within a reasonable period determined in accordance with the calendar. The deadline should not exceed six calendar days.

(5) If the requested documents are not submitted within the time limit, the tender shall be excluded.

(6) Subsections (1), (3), (4) and (5) shall apply mutatis mutandis to the competition.

§ 16b EU

Suitability

(1) In the open procedure, the suitability of the bidders shall be examined. In this context, the bids of the bidders whose suitability provides the guarantees necessary for the fulfilment of the contractual obligations must be selected on the basis of the evidence submitted; this means that they have the

necessary expertise and performance, that there are no grounds for exclusion in accordance with § 6e EU and that they have sufficient technical and economic resources.

2. By way of derogation from paragraph 1, tenders may be examined first, provided that it is ensured that the subsequent examination of the absence of grounds for exclusion and compliance with the suitability requirements is carried out impartially and transparently.

(3) In the case of restricted procedures, negotiated procedures, competitive dialogue and an innovation partnership, only circumstances are to be taken into account which, after the invitation to submit tenders, give rise to doubts as to the suitability of the bidder (see Section 6b EU (2) no. 3).

§ 16c EU Examination

(1) The bids of suitable bidders, which are not excluded, shall be examined for compliance with the requirements set, in particular from a mathematical, technical and economic point of view. Certificates, in particular quality marks, test reports, declarations of conformity and certifications that meet the conditions specified in § 7a EU, are permitted as proof of the fulfilment of specific environmental, social or other characteristics of the service to be awarded.

(2)

1.

If the total amount of an ordinal number (item) does not correspond to the result of the multiplication of the quantity approach and the unit price, the unit price shall be decisive.

2.

If a lump sum is awarded, this applies regardless of any individual prices indicated.

(3) The final bid sums determined on the basis of the examination shall be noted in the minutes of the opening date.

§ 16d EU Evaluation

(1)

1.

A tender with an unreasonably high or low price or with unreasonably high or low costs may not be awarded. In particular, the contracting authority rejects a tender that is unreasonably low because it does not meet the applicable environmental, social and labour law requirements.

2.

If a tender price appears to be unreasonably low and the reasonableness cannot be assessed on the basis of available documents on the price determination, the bidder must be requested to provide information in text form on the determination of the prices or costs for the entire service or for partial services before the tender is rejected, if necessary by specifying a reasonable response period.

In assessing appropriateness, the contracting authority – in consultation with the tenderer – examines the composition in question, taking into account the evidence provided.

3.

If tenders are abnormally low as a result of State aid, this is a reason for rejecting them only if the tenderer cannot prove that the aid in question was lawfully granted. The contracting authority shall grant the tenderer a sufficient period of time to provide such proof. Contracting authorities that reject a tender despite the tenderer's evidence to that effect must inform the Commission of the European Union.

4.

Only those bids are shortlisted which, taking into account rational construction operations and economical economic management, can be expected to be flawlessly executed, including liability for defect claims.

(2)

1.

The contract will be awarded to the most economical bid. The basis for this is an assessment by the contracting authority as to whether and to what extent the bid meets the specified award criteria. The most economical offer is determined by the best price-performance ratio. In addition to the price or costs, qualitative, environmental or social aspects can also be taken into account to determine this.

2.

Only award criteria and their weighting that are specified in the contract notice or in the award documents may be taken into account.

Award criteria can be in particular:

a)

Quality including technical value, aesthetics, practicality, accessibility, "design for all", social, environmental and innovative characteristics;

b)

the organisation, qualifications and experience of the staff entrusted with the performance of the contract, if the quality of the personnel employed may have a significant influence on the level of performance of the contract, or

c)

after-sales service and technical assistance, as well as execution time.

The award criteria must be related to the subject matter of the contract. Award criteria are related to the subject matter of the contract if they relate to it in any respect and at any stage of its life cycle, even if such factors do not affect the physical characteristics of the subject matter of the contract.

3.

The award criteria must be defined and defined in such a way as to ensure the possibility of effective competition, to prevent the award of the contract arbitrarily and to enable effective verification of whether and to what extent the tenders meet the award criteria.

4.

Fixed prices or fixed costs can also be specified, so that competition only takes place on the basis of quality.

5.

Life cycle costing includes the following costs in whole or in part:

a)

costs borne by the contracting authority or other users, in particular acquisition costs, usage costs, maintenance costs, as well as end-of-life costs (such as collection and recycling costs);

b)

costs arising from the externalities of environmental pollution associated with the performance during its life cycle, provided that its monetary value can be determined and verified; such costs may include costs of emitting greenhouse gases and other pollutants, as well as other costs of mitigating climate change.

6.

If the contracting authority evaluates the life-cycle cost approach, it must specify in the contract notice or in the tender documents the data to be provided by the contractor and the method for determining the life-cycle costs. The methodology for assessing external environmental costs must:

a)

are based on objectively verifiable and non-discriminatory criteria;

b)

be accessible to all interested parties, and

c)

ensure that the required data can be provided by the companies with reasonable effort.

7.

In the event that a common methodology for calculating life-cycle costs is made mandatory by a legal act of the European Union, this common methodology will be applied to the assessment of life-cycle costs.

(3) An offer pursuant to Section 13 EU subsection 2 shall be regarded as a main offer.

(4) Unconditional price reductions shall not be assessed if they are not listed in the place designated by the contracting authority in accordance with Section 13 EU (4). Unsolicited discounts with conditions for the payment period (cash discounts) will not be taken into account in the evaluation of the offers.

(5) The provisions of subsections (1) and (2) as well as of Sections 16b EU, 16c EU (2) shall also apply to negotiated procedures, competitive dialogues and innovation partnerships. Paragraphs 3 and 4 as well as Sections 16 EU, 16c EU paragraph 1 shall also apply mutatis mutandis to negotiated procedures, competitive dialogues and innovation partnerships.

§ 17 EU
Cancellation of the tender

(1) The invitation to tender may be cancelled if:

1.
no tender has been received that complies with the tender conditions,
2.
the procurement documents must be fundamentally changed,
3.
there are other serious reasons.

(2)

1.
Candidates and tenderers must be informed immediately in text form of the cancellation of the invitation to tender, stating the reasons and, if necessary, of the intention to initiate a new award procedure.

2.
In this context, the contracting authority may withhold certain information if the disclosure

- a)
obstruct law enforcement,
- b)
are contrary to the public interest,
- c)
harm the legitimate business interests of public or private companies, or
- d)
would undermine fair competition.

**§ 18 EU
Surcharge**

(1) The contract shall be awarded as soon as possible, but at least in sufficient time for the tenderer to receive the declaration before the expiry of the binding period.

(2) If extensions, restrictions or changes are made or if the contract is awarded late, the tenderer shall be requested to declare his acceptance without delay when the contract is awarded.

(3)

1.

The award of a construction contract must be announced.

2.

The contract notice shall be prepared in accordance with the requirements of column 29 in Table 2 of the Annex to Implementing Regulation (EU) 2019/1780 in conjunction with Section 10a VgV.

3.

Individual contracts awarded on the basis of a framework agreement are not disclosed.

4.

If prior information was issued as a call for competition pursuant to Section 12 EU (2) and no further contract is to be awarded during the period covered by the prior information, the contract notice shall contain a corresponding notice.

5.

Not to be included in the contract notice are information the publication of which

a)

obstruct law enforcement,

b)

are contrary to the public interest,

c)

harm the legitimate commercial interests of public or private undertakings, or

d)

would undermine fair competition.

(4) The contract notice shall be transmitted to the Publications Office of the European Union electronically via the Central Public Procurement Data Service as soon as possible – no later than 30 calendar days after the contract has been awarded.

§ 19 EU
Applications and offers not considered

(1) Applicants whose applications have been rejected, as well as bidders whose bids have been excluded (§ 16 EU), and those whose bids are not shortlisted, shall be informed immediately.

2. The contracting authority shall inform the tenderers concerned whose tenders are not to be considered:

1.

the name of the company whose offer is to be accepted,

2.

on the reasons for the planned non-consideration of their bid and

3.

about the earliest date of conclusion of the contract

immediately in text form.

This shall also apply to candidates who have not been provided with information pursuant to paragraph 1 on the rejection of their application before the notification of the award decision has been issued to the tenderers concerned.

A contract may only be concluded 15 calendar days after the information has been sent in accordance with sentences 1 and 2. If the information is sent by fax or electronically, the period is reduced to ten calendar days. The period starts to run on the day following the sending of the information by the contracting authority; the date of receipt by the applicant or tenderer concerned is irrelevant.

(3) The obligation to provide information pursuant to subsection (2) shall not apply in cases in which the negotiated procedure without a competitive bidding process is justified on grounds of particular urgency.

4. At the request of the candidate or tenderer, the contracting authority shall provide information in text form as soon as possible and in any event no later than within a period of 15 calendar days after receipt of the application:

1.

inform any unsuccessful candidate of the reasons for the rejection of his or her application to participate;

2.

each tenderer who has submitted a proper tender of the characteristics and relative merits of the selected tender and of the name of the successful tenderer or of the parties to the framework agreement;

3.

any tenderer who has submitted a proper tender on the progress and progress of the negotiations and dialogue with tenderers.

Section 17 EU (2) number 2 shall apply mutatis mutandis.

(5) Bids and elaborations of the bidders that have not been taken into account may not be used for a new award or for other purposes.

(6) Drafts, elaborations, samples and samples of bids not considered are to be returned if this is requested in the bid or within 30 calendar days after the bid has been rejected.

§ 20 EU Documentation

The award procedure must be documented in accordance with § 8 VgV.

§ 21 EU Inspection authorities

The notice and the tender documents shall indicate the review authority with the address to which the applicant or tenderer may turn for the purpose of reviewing alleged infringements of the procurement provisions.

§ 22 EU Order changes during the contract period

(1) Significant changes to a public contract during the term of the contract require a new award procedure.

Changes that result in the public contract differing significantly from the originally awarded public contract are material. A substantial change exists in particular if

1.
the amendment introduces conditions which, if they had applied to the original award procedure,
 - a)
would have made it possible to admit other candidates or tenderers,
 - b)
would have made it possible to accept another offer, or
 - c)
had aroused the interest of other participants in the award procedure,

2.

the amendment shifts the economic balance of the public contract in favour of the contractor in a way that was not provided for in the original contract,

3.

the amendment significantly expands the scope of the public contract, or

4.

a new contractor shall replace the contractor in cases other than those provided for in paragraph 2(4).

(2) Without prejudice to paragraph 1, the amendment of a public contract without conducting a new award procedure shall be permissible if:

1.

the original tender documents provide for clear, precise and unambiguously worded review clauses or options that contain information on the nature, scope and conditions of possible changes to the contract, and the overall character of the contract does not change as a result of the amendment,

2.

additional supplies, works or services have become necessary that were not provided for in the original tender documents, and a change of contractor

a)

cannot be carried out for economic or technical reasons, and

b)

would entail considerable difficulties or considerable additional costs for the contracting authority,

3.

the amendment has become necessary due to circumstances which the contracting authority could not have foreseen in the course of its duty of care and the overall character of the contract does not change as a result of the change, or

4.

a new contractor replaces the previous contractor

a)

on the basis of a review clause within the meaning of point 1,

b)

on the basis of the fact that another undertaking which fulfils the initially established eligibility requirements replaces the original contractor, in whole or in part, in the course of a corporate restructuring, such as by acquisition, merger, acquisition or insolvency, provided that this does not result in further substantial changes within the meaning of paragraph 1, or

c)

due to the fact that the contracting authority itself assumes the obligations of the main contractor towards its subcontractors.

In the cases of numbers 2 and 3, the price may not be increased by more than 50 percent of the value of the original order. In the event of several successive amendments to the contract, this limitation

shall apply to the value of each individual modification, unless the modifications are made with the aim of circumventing the provisions of this Part.

(3) The amendment of a public contract without conducting a new award procedure shall also be permissible if the overall character of the contract does not change and the value of the change

1.

does not exceed the respective thresholds pursuant to Section 106 GWB and

2.

is not more than ten per cent of the original contract value in the case of supply and service contracts and not more than 15 per cent in the case of works contracts.

In the case of multiple consecutive changes, the total value of the changes is decisive.

(4) If the contract contains an indexation clause, the higher price shall be used as the reference value for the calculation of the value pursuant to subsection (2) sentences 2 and 3 and pursuant to subsection (3).

(5) Amendments pursuant to subsection (2) nos. 2 and 3 shall be published in the Official Journal of the European Union in accordance with the requirements of column 38 in Table 2 of the Annex to Implementing Regulation (EU) 2019/1780 in conjunction with Section 10a VgV via the central data service for public purchasing.

Appendix TS

Technical Specifications

1.

"Technical Specification" has one of the following meanings:

a)

in the case of public works contracts, all the technical descriptions contained, in particular in the tender documents, which define the properties required of a material, product or supply to fulfil the purpose intended by the contracting authority; these characteristics include environmental and climate performance levels, "design for all" (including access for persons with disabilities) and conformity assessment, performance, usability, safety or dimensions, including quality assurance procedures, terminology, symbols, test and inspection methods, packaging, marking and labelling, instructions for use, and production processes and methods at each stage of the process. life cycle of construction services; they also include the rules on design and cost accounting, the conditions for the testing, inspection and acceptance of works, the construction methods or procedures and any other technical requirements which the contracting authority is able to specify by means of general and specific rules for finished works or the materials or parts necessary for them;

b)

in the case of public service or supply contracts, a specification contained in a document prescribing characteristics for a product or service, such as quality levels, environmental and climate performance levels, 'design for all' (including access for persons with disabilities) and conformity assessment, performance, requirements for usability, safety or dimensions of the product, including the rules on the name of sale; terminology, symbols, tests and test methods, packaging, marking and labelling, instructions for use, production processes and methods at each stage of the supply or service life cycle and conformity assessment procedures;

2.

'Standard' means a technical specification adopted by a recognised standardisation organisation for repeated or continuous application, compliance with which is not mandatory, and which falls under one of the following categories:

a)

International standard: standard adopted by an international standardisation organisation and available to the public;

b)

European standard: standard adopted by a European standardisation organisation and available to the public;

c)

national standard: standard adopted by a national standardisation organisation and available to the public;

3.

'European Technical Assessment' means a documented assessment of the performance of a construction product in relation to its essential characteristics in accordance with the relevant European Assessment Document, as defined in Article 2(12) of Regulation (EU) No 305/2011 of the European Parliament and of the Council;

4.

'common technical specifications' means technical specifications in the ICT field established in accordance with Articles 13 and 14 of Regulation (EU) No 1025/2012;

5.

'technical reference' means any reference framework, other than a European standard, developed by the European standardisation organisations in accordance with procedures adapted to the needs of the market.

Section 3 *

Procurement provisions within the scope of Directive 2009/81/EC⁶ (VOB/A – VS)⁷

§ 1 VS Scope

(1) Construction contracts are contracts for the execution or simultaneous planning and execution

1.

of a construction project or a building for the client, which

a)

is the result of civil engineering or building construction work and

b)

is intended to fulfil an economic or technical function, or

2.

of a construction work by third parties that directly benefits the client economically, in accordance
with the requirements specified by the client.

In the field of defence and security, construction contracts relate to construction services that are directly related to the equipment referred to in Section 104 (1) GWB at all stages of their life cycle, as well as construction services specifically for military purposes or construction services within the framework of a classified information contract. Construction services within the framework of a classified information contract are construction services for the provision of which classified information is used in accordance with § 4 of the Act on the Requirements and Procedure of Federal Security Clearances or in accordance with the corresponding provisions of the Länder or which require or include such classified information.

(2)

1.

The provisions of this section shall be applied by contracting entities within the meaning of Section 99

GWB and sector contracting entities within the meaning of Section 100 GWB for works contracts pursuant to subsection (1) for which the estimated total contract value of the construction measure or building (all construction contracts for a construction facility) corresponds at least to the threshold value excluding VAT resulting from Section 106 (2) no. 3 GWB.

2.

The estimate of the contract value is based on § 3 of the Defence and Security Procurement Ordinance (VSVgV).

(3) If, in the case of a construction contract, part of the service is defence or security-specific, the provisions of Section 111 GWB shall apply.

§ 2 VS **Principles**

(1) Public contracts shall be awarded in competition and by means of transparent procedures. In doing so, the principles of efficiency and proportionality are observed. Restrictive and unfair practices must be combated.

(2) Participants in an award procedure shall be treated equally, unless unequal treatment is expressly required or permitted by the GWB.

(3) Public contracts shall be awarded to competent and efficient (suitable) undertakings which have not been excluded pursuant to § 6e VS.

(4) The provisions on when natural persons are considered biased in decisions in an award procedure for a contracting authority and may not participate in an award procedure are governed by § 42 VSVgV.

(5) The contracting authority, applicants, tenderers and contractors shall maintain the confidentiality of all information and documents in accordance with these Public Procurement Regulations or other legal provisions.

6. Before initiating an award procedure, the contracting authority may carry out market consultations in order to prepare for the award of the contract and to inform contractors of its plans for the award of the contract and the requirements for the contract. The implementation of procurement procedures for the purpose of market exploration is not permitted.

(7) The contracting authority may impose conditions on candidates and tenderers for the protection of classified information which they transmit to them in the course of the procedure for the award of a contract. It may require those candidates and tenderers to ensure compliance with those conditions by their subcontractors.

§ 3 VS **Types of allocation**

Construction contracts within the meaning of § 1 VS are awarded by public contracting authorities in accordance with § 99 GWB and sector contracting authorities within the meaning of § 100 GWB:

1.

in restricted proceedings; in the case of a restricted procedure, a limited number of companies from the group of applicants are then invited to submit tenders,

2.

in the negotiated procedure; in the case of a negotiated procedure, with or without competitive bidding, the contracting authority shall approach selected undertakings and negotiate with one or more of those undertakings on the tenders submitted by them in order to adapt them in accordance with the requirements set out in the contract notice, the tender documents and any other documents;

3.

in competitive dialogue; a competitive dialogue is a public procurement procedure with the aim of identifying and defining the means by which the needs of the contracting authority can best be met.

§ 3a VS Zulässigkeitsvoraussetzungen

(1) Contracts shall be awarded by restricted procedure or by negotiated procedure with competitive bidding. In justified exceptional cases, a negotiated procedure without a competitive bidding process or a competitive dialogue is permitted.

(2) The negotiated procedure without a competitive bidding process shall be permissible:

1.

if, in the case of a restricted procedure, a negotiated procedure with a competitive bidding process or a competitive dialogue,

a)

no economic offers have been submitted and

b)

the original contract documents are not fundamentally changed, and

c)

all bidders from the previous procedure who are competent and capable (suitable) and who have not been excluded pursuant to § 6e VS are included in the negotiated procedure,

2.

if, in the case of a restricted procedure, a negotiated procedure with a competitive bidding process or a competitive dialogue,

a)

no offers or no applications have been submitted, or

b)

only those tenders have been submitted which are to be excluded under § 16 VS,

and the original contract documents are not fundamentally changed,

3.

if the work can only be carried out by a specific company for technical reasons or for the protection of exclusive rights,

4.

if, due to the urgency of the performance for compelling reasons as a result of events that the client did not cause and could not have foreseen, or due to urgent reasons in crisis situations, the deadlines prescribed in §§ 10b VS to 10d VS cannot be met,

5.

if similar works are repeated which are awarded by the same contracting authority to the contractor who won the original contract and if they correspond to a basic design and this was the subject of the original contract awarded following a restricted procedure, a negotiated procedure with a competitive bidding procedure or a competitive dialogue. The possibility of using this procedure must be indicated at the time of the contract notice for the first project; the total contract value envisaged for the continuation of the construction work shall be taken into account by the contracting authority in the application of § 1 VS. However, this procedure may only be used within five years of the conclusion of the first contract.

(3) Competitive dialogue shall be permissible if the contracting authority is objectively unable to:

1.

indicate the technical means by which its needs and requirements can be met, or

2.

the legal or financial conditions of the project.

§ 3b VS Procedure

(1) In the restricted procedure, at least three suitable candidates must be invited. In any case, the number of candidates invited must ensure genuine competition. Eligibility must be assessed on the basis of the evidence submitted with the application to participate.

(2)

1.

In the negotiated procedure with competitive participation and in the competitive dialogue, at least three candidates must be invited to negotiate or engage in dialogue if there is a sufficient number of suitable candidates.

2.

If the contracting authority wishes to limit the number of participants in the negotiated procedure with competitive participation or in competitive dialogue, it shall indicate the following in the contract notice:

a)

the objective, non-discriminatory and mission-related criteria provided for by it, and

b)

the minimum number provided for and, where applicable, the maximum number of candidates to be invited.

If the number of candidates meeting the eligibility criteria and the minimum capacity requirements is less than the minimum number, the contracting authority may continue the procedure by inviting the candidate(s) who have the required capacity.

If the contracting authority considers that the number of suitable candidates is too small to ensure genuine competition, it may suspend the procedure and republish the first contract notice pursuant to Section 12 of the VS paragraph 2 setting a new deadline for the submission of applications to participate. In this case, the candidates selected after the first publication and those selected after the second publication will be invited. This possibility exists without prejudice to the contracting authority's right to terminate the ongoing procurement procedure and to issue a new invitation to tender.

3.

The contracting authority shall ensure that all bidders are treated equally in the negotiations. In particular, it refrains from any discriminatory disclosure of information which could favour certain tenderers over others.

4.

The contracting authority may provide for the negotiated procedure to be carried out in various successive stages. At each stage of negotiation, the number of tenders under negotiation may be reduced on the basis of the award criteria specified in the contract notice or in the contract documents. In the final phase, there must still be enough offers to ensure competition.

(3)

1.

In competitive dialogue, the contracting authority must make its needs and requirements known; these requirements are explained in the contract notice or in a description.

2.

A dialogue must be opened with the companies that have been selected. In the dialogue, the client determines how his needs can best be met; it can discuss all the details of the contract with the selected companies.

3.

The contracting authority must ensure that all companies are treated equally in the dialogue; in particular, it may not disclose information in such a way as to favour certain undertakings. The Client may submit proposed solutions or confidential information of a company

a)

not pass on to the other companies without the latter's consent, and

b)

only in the context of the procurement procedure.

4.

The contracting authority may provide for the dialogue to be conducted in different successive phases. At each dialogue stage, the number of solutions to be discussed may be reduced on the basis

of the award criteria set out in the contract notice or in the tender documents. The contracting authority must inform the companies if their solutions are not planned for the next dialogue phase. In the final phase, there must still be enough offers to ensure competition.

5.

The contracting authority shall declare the dialogue closed if:

a)

a solution has been found that meets their needs and requirements, or

b)

it is evident that no solution can be found.

The contracting authority must inform the companies about the conclusion of the dialogue.

6.

In the case of point 5(a), the contracting authority shall invite the undertakings to submit their final tender on the basis of the solutions submitted and specified in the dialogue phase. The tenders must contain all the details necessary to carry out the project. The Client may demand that clarifications, clarifications and additions to these offers be made. However, such clarifications, clarifications or additions must not have the effect of altering fundamental elements of the tender or invitation to tender, of distorting competition or of discriminating against other undertakings involved in the procedure.

7.

The contracting authority shall evaluate the tenders on the basis of the award criteria laid down in the contract notice or in the tender documents and select the most economical tender. The contracting authority may request the undertaking whose tender has been determined to be the most cost-effective to explain certain details of the tender in more detail or to confirm any commitments contained in the tender. This must not lead to changes in essential aspects of the tender or invitation to tender and to distortion of competition or discrimination against other undertakings involved in the procedure.

8.

If the contracting authority demands that the companies participating in the competitive dialogue prepare drafts, plans, drawings, calculations or other documents, it must uniformly grant appropriate reimbursement of costs to all companies that have submitted the required documents in good time.

§ 4 VS

Types of contracts

(1) Construction contracts shall be awarded in such a way that the remuneration is calculated on the basis of performance (service contract), namely:

1.

as a rule, at unit prices for technically and economically uniform partial services, the quantity of which must be specified by the Client in the contract documents in terms of dimensions, weight or number of units (unit price contract),

2.

in suitable cases, for a lump sum if the service is precisely determined in terms of the type of performance and scope and a change in the execution is not to be expected (lump sum contract).

(2) By way of derogation from subsection (1), construction contracts of a smaller size which predominantly entail wage costs may be awarded on an hourly basis (hourly wage contract).

(3) The tender procedure shall be based on the fact that the tenderer must include the prices he demands for his services in the tender specifications or indicate them in another way in the tender.

(4) The bidding and rebidding procedure, in which prices quoted by the contracting authority are subject to the bidders' bidders, shall only be applied in exceptional cases in the case of regularly recurring maintenance work, the scope of which is to be limited as far as possible.

§ 4a VS Framework agreements

(1) A framework agreement shall be concluded within the framework of a type of procedure applicable in accordance with these Public Procurement Regulations. The envisaged contract volume must be determined and announced as precisely as possible, but does not have to be conclusively determined. A framework agreement shall not be abusive or applied in such a way as to impede, restrict or distort competition.

2. Individual contracts based on a framework agreement shall be awarded in accordance with the criteria set out in this paragraph and paragraphs 3 to 5. Individual contracts are awarded exclusively between the contracting entities named in the contract notice or the invitation to confirm interest and those companies that are parties to the framework agreement at the time the individual contract is concluded. No significant changes may be made to the terms of the framework agreement.

3. Where a framework agreement is concluded with only one undertaking, the individual contracts based on that framework agreement shall be awarded in accordance with the terms of the framework agreement. For the award of individual contracts, the contracting authority may request the undertaking party to the framework agreement in text form to complete its tender if necessary.

4. Where a framework agreement is concluded with more than one undertaking, at least three undertakings shall be involved, provided that a sufficiently large number of undertakings meet the selection criteria or a sufficiently large number of admissible tenders meet the award criteria. Individual contracts based on a framework agreement concluded with several undertakings shall be awarded as follows:

1.

in accordance with the terms of the framework agreement, without a new tendering procedure, if the framework agreement lays down all the conditions for the performance of the works and the objective conditions for the selection of the undertakings which will carry out it as a party to the framework agreement; the latter conditions shall be set out in the contract notice or the tender documents for the framework agreement;

2.

if the framework agreement lays down all the conditions for the performance of the works, partly without a new award procedure in accordance with point 1 and partly with a new award procedure between the undertakings that are parties to the framework agreement in accordance with point 3, if this possibility is specified in the contract notice or the award documents for the framework agreement by the contracting authority; the decision whether to procure certain works following a new procurement procedure or directly in accordance with the terms of the framework agreement shall be taken on the basis of objective criteria set out in the contract notice or the tender documents for the framework agreement; the contract notice or the tender documents shall also specify the conditions that may be subject to a new award procedure; these possibilities shall also apply to any lot of a framework agreement for which all the conditions for the performance of the works are laid down in the framework agreement, regardless of whether all the conditions for the performance of a works service have been laid down for other lots; or

3.

unless all the conditions for the performance of the works are laid down in the framework agreement, by means of a new procurement procedure between the undertakings that are parties to the framework agreement.

5. The award procedures referred to in points (2) and (3) of paragraph 4 shall be based on the same conditions as the conclusion of the framework agreement and, where necessary, on more detailed conditions and, where appropriate, on other conditions specified in the contract notice or the award documents for the framework agreement in accordance with the following procedure:

1.

before each individual contract is awarded, the contracting authority shall consult in text form with the undertakings capable of performing the contract;

2.

the contracting authority shall set a sufficient deadline for the submission of tenders for each individual contract; in doing so, it shall take into account, inter alia, the complexity of the subject matter of the contract and the time required to submit the tenders;

3.

the bids must be submitted in text form and may not be opened until the submission deadline has expired;

4.

the contracting authority shall award the individual contracts to the tenderer who has submitted the most economical tender in each case on the basis of the award criteria set out in the contract notice or in the documents relating to the framework agreement.

(6) The duration of a framework agreement may not exceed seven years, unless there is a special case relating to the subject matter of the framework agreement.

§ 5 VS

Uniform award, allocation by lot

(1) Construction contracts shall be awarded in such a way that uniform execution and unequivocally comprehensive liability for claims for defects is achieved; they are therefore to be awarded as a rule with the supplies belonging to the service.

(2) Interests of small and medium-sized enterprises shall be given priority in the award of public contracts. Services are to be divided in quantity (partial lots) and awarded separately according to type or subject area (subject lots). Several partial or specialist lots may be awarded together if economic or technical reasons so require. If an undertaking which is not a contracting authority is entrusted with the performance or performance of a public task, the contracting authority shall oblige the undertaking to proceed in accordance with sentences 1 to 3 if it subcontracts to third parties.

§ 6 VS

Participants in the competition

(1) Public contracts shall be awarded to competent and efficient (suitable) undertakings which have not been excluded pursuant to § 6e VS.

(2) An undertaking is suitable if it fulfils the criteria laid down in detail by the contracting authority for the proper performance of the contract (suitability criteria). The eligibility criteria may relate only to:

1.

Qualification and permission to practise a profession,

2.

economic and financial capacity,

3.

technical and professional performance.

The selection criteria must be related to the subject matter of the contract and proportionate to it.

(3)

1.

Competition must not be limited to companies based in certain regions or places.

2.

Bidding consortia are to be equated with individual bidders. The contracting authority may require bidding consortia to adopt a specific legal form if this is necessary for the proper performance of the contract. The acceptance of this legal form can only be demanded by the bidding consortium if the contract is awarded to it.

3.

If an applicant or tenderer has advised or otherwise supported the contracting authority before the initiation of the award procedure, the contracting authority must ensure that the competition is not distorted by the participation of this applicant or tenderer.

§ 6a VS
Proof of suitability

(1) To prove this, the suitability (specialist knowledge and performance) and the absence of grounds for exclusion pursuant to § 6e VS of the applicants or bidders must be examined.

(2)

1.

The proof includes the following information:

a)

the turnover of the undertaking in each case in relation to the last three completed financial years, insofar as it relates to construction services and other services comparable to the service to be awarded, including the share in the case of contracts carried out jointly with other undertakings,

b)

the performance of services in the last five completed financial years that are comparable to the service to be awarded,

c)

the number of employees employed on an average annual basis in the last three completed financial years, broken down by wage groups with separately designated technical management personnel,

d)

entry in the professional register of their registered office or domicile, and

e)

the registration of the company with the employers' liability insurance association.

2.

Other additional suitable information relating to the specific assignment may be requested, in particular information and evidence that is necessary for the handling of classified information or is intended to ensure security of supply, as well as information that is suitable for the examination of expertise.

3.

The Client shall admit other evidence of economic and financial capacity that it deems appropriate if it determines that there are valid reasons for doing so.

4.

If a company is unable to provide the required evidence for a legitimate reason, it may provide proof of its suitability by submitting other evidence that the contracting authority considers suitable.

§ 6b VS

Means of verification, procedures

(1) Proof, including of the absence of grounds for exclusion pursuant to § 6e VS, can be provided by means of an entry in the generally accessible list of the Association for the Prequalification of Construction Companies (Prequalification Directory), which can be accessed directly by the client.

Entry in an equivalent list of other Member States shall be accepted as evidence.

(2) The applicants or tenderers may also provide the information by means of individual references. The contracting authority may provide that self-declarations are sufficient for individual information, insofar as it is compatible with defence and security interests. Self-declarations that serve as preliminary evidence must be confirmed by the tenderers whose bids are shortlisted by appropriate certificates from the competent authorities.

(3) The contracting authority shall require that the evidence be submitted with the application to participate.

(4) Before the invitation to tender is issued, the suitability of the undertakings shall be examined. In doing so, the companies whose suitability offers the security necessary for the fulfilment of the contractual obligations must be selected.

(5) If an applicant must be granted access to classified information of the degree "VS-CONFIDENTIAL" or higher in order to prepare an offer, the applicant must submit the required information and evidence before access is granted. If the applicant does not comply, the contracting authority shall exclude him from participating in the award procedure.

§ 6c VS

Quality Assurance and Environmental Management

(1) The contracting authority may also request information on environmental management procedures which the applicant or tenderer may intend to apply in the performance of the contract. In this case, the contracting authority may require the submission of certificates from independent bodies in order to demonstrate that the applicant or tenderer complies with certain environmental management standards. In doing so, the Client shall refer to

1.

the Community Eco-Management and Audit Scheme (EMAS), or

2.

standards for environmental management, the

a)

be based on the relevant European or international standards, and

b)

are certified by relevant bodies that comply with Community law or relevant European or international certification standards.

Equivalent certificates from bodies in other Member States must be recognised. The contracting authority shall also recognise other evidence of equivalent environmental management measures submitted by applicants or bidders.

(2) Contracting authorities may require the submission of certificates from independent bodies in order to prove that the applicant or tenderer meets certain quality assurance standards. In doing so, the contracting authority refers to quality assurance procedures which:

1.
comply with the relevant European standards and
2.
are certified by appropriate bodies that comply with European certification standards.

Equivalent certificates from bodies in other Member States shall be recognised. The Client shall also recognise other equivalent evidence of quality assurance measures.

§ 6d VS Capacities of other companies

An applicant or bidder may, if necessary also as a member of a bidding consortium, make use of the skills of other companies for the performance of a contract. In that regard, the legal nature of the link between it and those undertakings is irrelevant. In this case, the contracting authority shall require the shortlisted candidates or tenderers to prove that they have the necessary resources at their disposal. For example, corresponding declarations of commitment from these companies can be submitted as proof.

§ 6e VS Exclusion criteria

(1) The contracting authority shall exclude an undertaking from participation at any time in the procurement procedure if it is aware that a person whose conduct is attributable to the undertaking pursuant to subsection (3) has been convicted by a final judgment or that a fine has been imposed on the undertaking pursuant to Section 30 of the Act on Administrative Offences for a criminal offence pursuant to:

1.
Section 129 of the Criminal Code (formation of criminal organisations), Section 129a of the Criminal Code (formation of terrorist organisations) or Section 129b of the Criminal Code (criminal and terrorist organisations abroad),

2.
§ 89c of the Criminal Code (terrorist financing) or because of participation in such an act or because of the provision or collection of financial resources in the knowledge that these financial resources

are or are to be used in whole or in part to commit an offence pursuant to § 89a (2) number 2 of the Criminal Code,

3.

Section 261 of the German Criminal Code (money laundering; concealment of illegally obtained assets),

4.

Section 263 of the Criminal Code (fraud), insofar as the offence is directed against the budget of the European Union or against households administered by or on behalf of the European Union,

5.

Section 264 of the Criminal Code (subsidy fraud), insofar as the offence is directed against the budget of the European Union or against budgets managed by or on behalf of the European Union,

6.

§ 299 of the Criminal Code (corruption and bribery in business transactions), §§ 299a and 299b of the Criminal Code (corruption and bribery in the health care sector),

7.

Section 108e of the Criminal Code (Bribery and bribery of elected officials),

8.

Sections 333 and 334 of the Criminal Code (granting of advantages and bribery), in each case also in conjunction with Section 335a of the Criminal Code (foreign and international employees),

9.

Article 2 § 2 of the Act on Combating International Bribery (Bribery of Foreign Members of Parliament in Connection with International Business Transactions) or

10.

§§ 232, 232a (1) to (5), §§ 232b to 233a of the Criminal Code (trafficking in human beings, forced prostitution, forced labour, exploitation of labour, exploitation by exploiting a deprivation of liberty).

(2) A conviction or the imposition of a fine within the meaning of subsection (1) shall be equivalent to a conviction or the imposition of a fine in accordance with the comparable provisions of other States.

(3) The conduct of a person who has been convicted by a final judgment shall be attributable to an undertaking if that person has acted as the person responsible for the management of the undertaking; this also includes the supervision of the management or the other exercise of supervisory powers in a managerial position.

(4) The contracting authority shall exclude an undertaking from participating in a procurement procedure if:

1.

the company has not fulfilled its obligations to pay taxes, duties and social security contributions and this has been established by a final court or final administrative decision, or

2.

the contracting authority can prove the breach of an obligation under number 1 in any other appropriate way.

Sentence 1 shall not apply if the company has fulfilled its obligations by making the payment or by undertaking to pay taxes, duties and social security contributions, including interest, late payment penalties and penalty surcharges.

(5) An exclusion pursuant to subsection (1) may be waived if this is required for compelling reasons of public interest. An exclusion pursuant to subsection 4 sentence 1 may be waived if this is required for compelling reasons of public interest or if an exclusion would be manifestly disproportionate. § 6f VS subsections 1 and 2 remain unaffected.

(6) The contracting authority may, taking into account the principle of proportionality, exclude an undertaking from participating in an award procedure at any stage of the award procedure if:

1.

the company has demonstrably violated applicable environmental, social and labour law obligations in the execution of public contracts,

2.

the company is insolvent, insolvency proceedings or similar proceedings have been applied for or opened against the assets of the company, the opening of such proceedings has been refused due to lack of assets, the company is in the process of liquidation or has ceased its activities,

3.

the undertaking has demonstrably committed serious misconduct in the course of its professional activities, as a result of which the integrity of the undertaking is called into question, in particular in the context of its professional activities, has breached its duty to ensure the security of information or supply in the context of a previous assignment; Paragraph 3 shall apply mutatis mutandis,

4.

the contracting authority has sufficient indications that the undertaking has entered into agreements with other undertakings or has concerted practices which have as their object or effect the prevention, restriction or distortion of competition,

5.

there is a conflict of interest in the conduct of the procurement procedure which could undermine the impartiality and independence of a person working for the contracting authority in the conduct of the procurement procedure and which cannot be effectively remedied by other, less restrictive measures,

6.

a distortion of competition results from the fact that the undertaking was already involved in the preparation of the award procedure and this distortion of competition cannot be eliminated by other, less restrictive measures,

7.

the undertaking has significantly or persistently deficienced an essential requirement in the performance of a previous public contract and this has led to premature termination, damages or a comparable legal consequence,

8.

the company has committed serious misrepresentation with regard to grounds for exclusion or suitability criteria, has withheld information or is unable to provide the necessary evidence, or

9.

The Company

a)

has attempted to influence the contracting authority's decision-making in an undue manner,

b)

has attempted to obtain confidential information which could give it an undue advantage in the procurement procedure;

c)

has negligently or intentionally provided misleading information that could significantly influence the contracting authority's award decision or has attempted to transmit such information, or

10.

the company demonstrably lacks the necessary trustworthiness to eliminate risks to national security; protected data sources can also be considered as evidence.

§ 6f VS

Self-purification

(1) Contracting authorities shall not exclude from participating in the award procedure an undertaking in respect of which there is a reason for exclusion pursuant to Section 6e of the Constitution of the Constitution if the undertaking has proven to the contracting authority or, pursuant to Section 8 of the Competition Register Act, to the Federal Cartel Office, that it

1.

has paid compensation or undertaken to pay compensation for any damage caused by a criminal offence or misconduct,

2.

has comprehensively clarified the facts and circumstances related to the offence or misconduct and the damage caused by it through active cooperation with the investigating authorities and the client, and

3.

has taken specific technical, organisational and personnel measures that are suitable to prevent further criminal offences or further misconduct.

§ 6e subsection 4 sentence 2 remains unaffected.

2. The assessment of the self-cleaning measures taken by the undertaking shall take into account the seriousness and particular circumstances of the offence or misconduct. The decision that the company's self-cleaning measures are assessed as insufficient must be justified to the company.

(3) If an undertaking in respect of which there is a reason for exclusion does not take any or insufficient self-cleaning measures in accordance with paragraph 1, it may:

1.

if there is a reason for exclusion pursuant to § 6e VS subsections 1 to 4, be excluded from participation in procurement procedures for a maximum period of five years from the date of the final conviction,

2.

if there is a reason for exclusion pursuant to § 6e VS paragraph 6, be excluded from participation in procurement procedures for a maximum period of three years from the event in question.

§ 7 VS Specifications

(1)

1.

The service must be described unambiguously and so exhaustively that all companies must understand the description in the same sense and can calculate their prices safely and without extensive preparatory work.

2.

In order to enable a flawless price determination, all circumstances influencing it must be determined and stated in the tender documents.

3.

The Contractor may not be burdened with an unusual risk for circumstances and events over which he has no influence and the impact of which he cannot estimate in advance on prices and deadlines.

4.

Requirement items are generally not to be included in the service description. Attached hourly wage work may only be included in the service description to the extent absolutely necessary.

5.

If necessary, the purpose and the intended use of the finished service must also be stated.

6.

The conditions of the construction site that are essential for the performance of the service, e.g. soil and water conditions, must be described in such a way that the company can adequately assess their effects on the structural system and the execution of the construction.

7.

The "Notes for the preparation of the service description" in Section 0 of the General Technical Contract Conditions for Construction Services, DIN 18299 et seq., must be observed.

2. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a particular production or origin or process characterising the products provided by a particular undertaking, or to trademarks, patents, types or a particular origin or production, where they favour or exclude certain undertakings or products. However, such references are permissible in exceptional cases if the subject matter of the contract cannot be described in a sufficiently precise and generally understandable manner; such references shall be accompanied by the addition "or equivalent".

(3) When describing the service, the customary designations shall be observed.

§ 7a VS Technical Specifications

(1) The technical requirements (specifications – see Annex TS, point 1) for the subject matter of the contract must be equally accessible to all undertakings.

(2) The technical specifications shall be formulated in the tender documents:

1.

either by reference to the technical specifications defined in Annex TS in order of precedence

a)

national civil standards implementing European standards;

b)

European technical assessments,

c)

common civil technical specifications,

d)

national civil standards implementing international standards;

e)

other international zivile Standards,

f)

other technical reference systems developed by the European standardisation bodies or, in the absence of such standards and specifications, national standards, national technical approvals or national technical specifications for the design, calculation and execution of works and the use of products;

g)

civil technical specifications developed and generally accepted by industry, or

h)

the national 'defence standards' and specifications for defence equipment that comply with those standards, as defined in point 3 of Annex III to Directive 2009/81/EC.

Each reference shall be accompanied by the addition "or equivalent";

2.

or in the form of performance or functional requirements which must be sufficiently precise to give undertakings a clear picture of the subject matter of the contract and to enable the contracting authority to award the contract;

3.

or in combination of numbers 1 and 2, i.e.

a)

in the form of performance or functional requirements by reference to the specifications referred to in point 1 as a means of presuming conformity with those performance or functional requirements;

b)

or by reference to the specifications referred to in point 1 in respect of certain characteristics and by reference to the performance or functional requirements referred to in point 2 in respect of other characteristics.

3. Where the contracting authority refers in the tender specifications to the specifications referred to in paragraph 2(1), it may not reject a tender on the ground that the service offered does not correspond to the specifications used, provided that the tenderer demonstrates in its tender to the contracting authority that the solutions proposed by it meet the requirements of the technical specification to which reference has been made: equally. A technical description from the manufacturer or a test report from a recognised body may be considered a suitable means.

4. Where the contracting entity specifies the technical specifications in the form of performance or functional requirements, it shall not reject a tender which complies with a national standard transposing a European standard or a European technical assessment, a common technical specification, an international standard or a technical reference system drawn up by the European standardisation bodies; if these specifications relate to the required performance or functional requirements. In its bid, the bidder must prove to the contracting authority by suitable means that the respective service in accordance with the standard meets the performance or functional requirements of the contracting authority. A technical description from the manufacturer or a test report from a recognised body may be considered a suitable means.

5. Where the contracting entity prescribes environmental characteristics in the form of performance or functional requirements, it may use the specifications defined in European, multinational or other eco-labels if:

1.

they are suitable for defining the characteristics of the subject matter of the contract,

2.

the requirements of the Ecolabel are developed on the basis of scientifically substantiated information,

3.

the eco-labels are adopted through a process in which interested parties, such as public authorities, consumers, manufacturers, distributors and environmental organisations, can participate, and

4.

the Ecolabel is accessible and available to all stakeholders.

The contracting authority may state in the tender documents that services bearing an ecolabel are presumed to meet the technical specifications set out in the tender specifications. However, the client must also accept any other suitable evidence, such as technical documents from the manufacturer or test reports from recognised bodies. Recognised bodies are the testing and calibration laboratories as well as the inspection and certification bodies that comply with the applicable European standards. The contracting authority shall recognise certificates issued by recognised bodies established in other Member States.

§ 7b VS

Production description with bill of quantities

(1) As a rule, the service shall be described by a general description of the construction task (building description) and a list of services divided into partial services.

(2) If necessary, the service shall also be represented in drawings or by means of test specimens or explained in another way, e.g. by references to similar services, by quantity or static calculations. Drawings and samples that are to be decisive for the execution must be clearly identified.

(3) Services which are part of the required service according to the terms and conditions of the contract, the technical terms of the contract or commercial custom (§ 2 (1) VOB/B) do not need to be specifically listed.

(4) In the list of services, the service shall be broken down in such a way that only those services are included under an ordinal number (item) which are to be regarded as similar in terms of their technical characteristics and for the purpose of pricing. Dissimilar services are to be combined under an atomic number (collective item) only if one partial service has no significant influence on the formation of an average price compared to another.

§ 7c VS

Leistungsbeschreibung mit Leistungsprogramm

(1) If, after weighing up all the circumstances, it is expedient, in derogation from § 7b VS subsection 1, to submit the design for the service to the competition together with the execution of the construction in order to determine the best technically, economically and creatively as well as functionally appropriate solution for the construction task, the service may be represented by a service programme.

(2)

1.

The service programme shall include a description of the construction task, from which the undertakings shall be able to identify all the conditions and circumstances relevant to the preparation of the design and its tender, and in which both the purpose of the finished service and the technical, economic, design and functional requirements placed on it shall be indicated, as well as, where appropriate, a model list of services, in which the quantities are wholly or partially left open.

2.

§ 7b VS subsections 2 to 4 shall apply mutatis mutandis.

(3) The tenderer shall be required to submit an offer which, in addition to the execution of the service, shall include the design together with a detailed explanation and a description of the construction work as well as a detailed and appropriately structured description of the service – if necessary with quantities and prices for parts of the service. If the service is described with quantities and prices, the tenderer must be required to

1.

represents the completeness of its information, in particular the quantities determined by itself, either without restriction or within the framework of a quantity tolerance to be specified in the tender documents, and

2.

any assumptions that it is forced to make in special cases because at the time of submission of the tender individual partial services cannot yet be determined in terms of type and quantity (e.g. excavation, demolition or dewatering work) – if necessary on the basis of plans and quantity determinations.

§ 8 VS

Procurement documents

(1) The tender documents shall consist of:

1.

the cover letter (invitation to submit an offer in accordance with subsection 2 nos. 1 to 3), if applicable, conditions of participation (subsection 2 no. 6) and

2.

the contract documents (paragraph 3 and §§ 7 VS to 7c VS, § 8a VS paragraphs 1 to 3).

(2)

1.

The cover letter shall contain the information specified in column 18 of Table 2 of the Annex to Implementing Regulation (EU) 2019/1780 which, in addition to the contractual documents, is necessary for the decision to submit a tender, if it has not already been published.

2.

In the tender documents, the contracting authority may request the tenderers to indicate in their tender the services which they intend to award to subcontractors.

3.

If the contracting authority has admitted ancillary offers in the contract notice, it must state:

a)

whether, by way of exception, it only allows ancillary offers in conjunction with a main offer,

b)

the minimum requirements for ancillary offers.

Bidders who offer a service the execution of which is not regulated in the General Technical Terms and Conditions or in the tender documents must be required in the tender to provide appropriate information on the execution and quality of this service.

4.

The contracting authority may state in the contract notice that it does not allow the submission of several main tenders.

5.

The contracting authority must conclusively specify all documents within the meaning of Section 16a VS paragraph 1 with the exception of product information at a central point in the tender documents.

6.

Contracting authorities who regularly award construction contracts should summarise the requirements that the companies must comply with when processing their bids in the conditions of participation and attach them to the cover letter.

(3) When awarding classified information contracts and contracts containing security of supply requirements, the contracting authority shall specify in the contract notice or the tender documents all measures and requirements that are necessary to ensure the protection of such classified information in accordance with the respective security level or to ensure security of supply.

§ 8a VS

General, Special and Additional Terms and Conditions

(1) The tender documents shall stipulate that the General Terms and Conditions of Contract for the Execution of Construction Services (VOB/B) and the General Technical Terms and Conditions of Contract for Construction Services (VOB/C) shall become part of the contract. This also applies to any Additional Terms and Conditions of Contract and any Additional Technical Terms and Conditions of the Contract, insofar as they are to become part of the Agreement.

(2)

1.

The General Terms and Conditions of Contract remain unchanged in principle. They may be supplemented by additional contractual conditions by contracting entities which are constantly awarding works contracts for the conditions generally prevailing in their case. These must not contradict the General Terms and Conditions of Contract.

2.

For the requirements of the individual case, the General Terms and Conditions of Contract and any Additional Terms and Conditions of Contract shall be supplemented by Special Terms and Conditions. In these, deviations from the General Terms and Conditions of Contract are to be limited to cases in which special agreements are expressly provided for therein and only to the extent required by the specific nature of the service and its execution.

(3) The General Technical Terms and Conditions of Contract shall remain unchanged in principle. They may be supplemented by Additional Technical Contract Terms and Conditions by contracting authorities who are constantly awarding construction contracts for the conditions generally prevailing in their case. For the requirements of the individual case, additions and changes must be specified in the service description.

(4)

1.

The Additional Terms and Conditions of Contract or the Special Conditions of Contract shall regulate, where necessary, the following:

a)

documents (§ 8b VS paragraph 3; § 3 paragraphs 5 and 6 VOB/B),

b)

Use of storage and work areas, access roads, sidings, water and energy connections (§ 4 paragraph 4 VOB/B),

c)

subcontracting to subcontractors (Section 4 (8) VOB/B),

d)

Execution deadlines (§ 9 VS; § 5 VOB/B),

e)

Liability (Section 10 (2) VOB/B),

f)

contractual penalties and acceleration payments (§ 9a VS; § 11 VOB/B),

g)

Acceptance (§ 12 VOB/B),

h)

Type of contract (§§ 4 VS, 4a VS), billing (§ 14 VOB/B),

i)

Hourly wage work (§ 15 VOB/B),

j)

Payments, advance payments (§ 16 VOB/B),

k)

Provision of security (§ 9c VS; § 17 VOB/B),

l)

Place of jurisdiction (Section 18 (1) VOB/B),

m)

non-wage and non-salary costs,

n)

Change in contract prices (§ 9d VS).

2.

Special agreements required in individual cases on the claims for defects and their statute of limitations (§ 9b VS; § 13 paragraphs 1, 4 and 7 VOB/B) and on the distribution of the risk in the event of damage that may arise from flooding, storm surges, groundwater, wind, snow, ice and the like (§ 7 VOB/B) must be made in the Special Terms and Conditions of Contract. If the same conditions within the meaning of § 9b VS are met for certain construction services, the special agreements may also be provided for in Additional Technical Contract Conditions.

§ 8b VS

Settlement of costs and trusts, arbitration proceedings

(1) In the case of restricted procedures, negotiated procedures and competitive dialogue, all documents shall be submitted free of charge.

(2)

1.

No compensation will be granted for the processing of the offer. If, however, the contracting authority requires the tenderer to prepare drafts, plans, drawings, static calculations, quantity calculations or other documents, in particular in the cases referred to in § 7c VS, appropriate compensation shall be determined uniformly for all tenderers in the invitation to tender. This compensation is due to every bidder who has submitted a bid in accordance with the invitation to tender with the required documents in good time.

2.

These principles apply mutatis mutandis to negotiated procedures and competitive dialogue.

(3) The contracting authority may use tender documents and a bidder's own proposals contained in the tenders only for the examination and evaluation of the tenders (§§ 16c VS and 16d VS). Any use beyond this period requires prior written agreement.

(4) If disputes arising from the contract are to be settled in arbitration proceedings to the exclusion of ordinary legal recourse, it shall be agreed in a special document relating only to the arbitration proceedings, unless Section 1031 (2) of the Code of Civil Procedure also permits another form of agreement.

§ 9 VS

Execution deadlines, individual deadlines, delay

(1)

1.

The execution deadlines must be sufficient; The season, working conditions and any particular difficulties must be taken into account. The contractor must be given sufficient time to prepare for construction.

2.

Exceptionally short deadlines are to be provided for only in cases of particular urgency.

3.

If it is to be agreed that execution is not to begin until requested (Section 5 (2) VOB/B), the period within which the request can be issued must be reasonable, taking into account the circumstances governing the execution; it shall be specified in the tender documents.

(2)

1.

If it requires a considerable interest on the part of the client, individual deadlines must be determined for self-contained parts of the service.

2.

If a construction schedule is drawn up so that the services of all companies are safely intertwined, only the individual deadlines that are particularly important for the progress of the overall work should be designated as contractually binding deadlines (contractual deadlines).

(3) If the handing over of drawings or other documents is important for compliance with execution deadlines, a deadline shall also be set for this.

(4) The Client may provide for a lump sum calculation of the damage caused by default (Section 5 (4) VOB/B) in the contract documents; it should not exceed five percent of the contract amount. Proof of lesser damage must be allowed.

§ 9a VS

Contractual penalties, acceleration remuneration

Contractual penalties for exceeding contractual deadlines are only to be agreed if the exceeding can cause significant disadvantages. The penalty shall be kept within reasonable limits. Acceleration payments (premiums) are only to be provided if completion before the expiry of the contract deadlines brings significant advantages.

§ 9b VS

Statute of limitations for claims for defects

Limitation periods other than those under Section 13 (4) VOB/B are to be provided for only if this is necessary due to the nature of the service. In such cases, all circumstances must be weighed against each other, in particular when any defects are likely to become apparent and to what extent the causes of the defects can still be proven, but also the effect on prices and the need for an equitable assessment of the limitation periods for claims for defects.

§ 9c VS

Guarantee

(1) The provision of security shall be waived in whole or in part if defects in the performance are unlikely to occur. If the contract sum is less than 250,000 euros excluding VAT, the provision of security for the performance of the contract and, as a rule, the provision of security for the claims for defects must be waived. In restricted procedures as well as in negotiated procedures and competitive dialogue, security deposits should generally not be required.

(2) The security shall not be assessed higher and its return shall not be provided for a later date than is necessary to protect the Client from damage. The security for the fulfilment of all obligations under the contract should not exceed five percent of the contract amount. The security for claims for defects should not exceed three percent of the settlement amount.

§ 9d VS

Änderung der Vergütung

Sind wesentliche Änderungen der Preisermittlungsgrundlagen zu erwarten, deren Eintritt oder Ausmaß ungewiss ist, so kann eine angemessene Änderung der Vergütung in den Vertragsunterlagen vorgesehen werden. Die Einzelheiten der Preisänderungen sind festzulegen.

§ 10 VS
Respites

If tenders can only be drawn up after an on-site visit or inspection of documents that have not been sent, longer deadlines should be set than the minimum deadlines to enable all undertakings to take cognisance of all the information necessary for the preparation of the tender.

§ 10a VS
free

§ 10b VS
Fristen in restricted proceedings

(1) In the case of restricted procedures, the deadline for receipt of applications for participation (application deadline) shall be at least 37 calendar days, calculated from the day after the contract notice has been sent.

(2) The application deadline may be shortened by seven calendar days in the case of contract notices which are prepared and transmitted electronically via the Internet portal of the Publications Office of the European Union (electronic contract notices).

(3) The tender period shall be at least 40 calendar days, calculated from the day after the invitation to tender has been sent.

(4) The tender period may be shortened to 36 calendar days from the day after the invitation to tender has been sent; it may not be less than 22 calendar days. The prerequisite for this is that a prior information notice in accordance with the prescribed model pursuant to § 12 VS paragraph 1 number 2 has been sent to the Publications Office of the European Union at least 52 calendar days, but no more than twelve months before the contract notice of the order is sent. This prior information must contain at least the information required for the restricted procedure in the model contract notice pursuant to Section 12 (2) of the VS (2) No. 2, insofar as this information was available at the time the prior information was sent.

(5) The tender period may be shortened by a further five calendar days if, from the publication of the contract notice, the contract documents and all additional documents are made available electronically in a freely accessible, direct and complete manner; the contract notice must indicate the internet address at which these documents can be accessed.

(6) For reasons of urgency,

1.

the application deadline shall be at least 15 calendar days or at least ten calendar days in the case of an electronic contract notice, if the contract documents and all additional documents are made freely accessible, direct and complete electronically from the date of publication of the contract notice; the contract notice must indicate the internet address at which these documents can be accessed,

2.

the tender period to at least ten calendar days

be shortened.

(7) Tenders in text form may be withdrawn until the expiry of the tender period.

(8) The contracting authority shall determine a reasonable period within which the bidders are bound by their bids (binding period). This should be as short as possible and not longer than the contracting authority needs for a speedy examination and evaluation of the bids (§§ 16 VS to 16d VS). A longer binding period than 30 calendar days is to be determined only in justified cases. The end of the binding period shall be indicated by indicating the calendar day.

(9) The binding period shall commence on the expiry of the tender period.

§ 10c VS

Deadlines in the negotiated procedure

(1) In the negotiated procedure with a competitive bidding process, the procedure shall be in accordance with §§ 10 VS and 10b VS subsections 1, 2, 6 number 1 and subsections 8 to 9.

(2) In the case of a negotiated procedure without a competitive bidding process, a sufficient tender period of no less than ten calendar days shall be provided for the processing and submission of tenders, even if there is urgency. In particular, the additional effort for visiting construction sites or obtaining documents for the processing of bids must be taken into account. The procedure is to be followed in accordance with § 10b VS paragraphs 8 and 9.

§ 10d VS

Deadlines in competitive dialogue

In the case of competitive dialogue, the procedure shall be in accordance with §§ 10 VS and 10b VS paragraphs 1, 2 and 8 to 9.

§ 11 VS

principles of Information Transmission

(1)

1.

The contracting authority shall indicate in the contract notice or the tender documents whether information will be transmitted by post, fax, directly, electronically or by a combination of these means of communication.

2.

The network chosen for electronic transmission must be available to the general public and must not restrict the access of candidates and tenderers to procurement procedures. The programs to be used for this purpose and their technical characteristics must be accessible to the general public, compatible with commonly used information and communication technology products and non-discriminatory.

3.

The contracting authority shall ensure that the information on the specifications of the equipment required for the electronic transmission of applications for participation and tenders, including encryption, is accessible to the interested undertakings. In addition, it must be ensured that the requirements specified in § 11a VS are met.

(2) The contracting authority may set up a procurer profile on the internet in which general information such as contact point, telephone and fax numbers, postal address and e-mail address as well as information on invitations to tender, planned and awarded contracts or cancelled procedures may be published.

(3) The contracting authority shall ensure the data integrity and confidentiality of the submitted applications for participation in the procurement procedure in an appropriate manner. Applications submitted by post or directly are

1.

in a sealed envelope,

2.

as applications for participation on the envelope and

3.

until the expiry of the prescribed period.

In the case of electronically transmitted requests to participate, data integrity and confidentiality must be ensured by appropriate organisational and technical solutions in accordance with the Client's requirements and by encryption. The encryption must be maintained until the expiry of the deadline set for the submission of applications.

(4) Applications to participate in the procurement procedure may also be submitted by fax or telephone, but must then be confirmed by the undertaking by the deadline for submitting the applications to participate by sending them by post, directly or electronically.

§ 11a VS
Requirements for electronic means

The equipment must ensure that:

1.
for which an electronic signature or an electronic seal can be used,
2.
the date and time of receipt of the requests to participate or tenders can be precisely determined,
3.
access to the data does not take place before the expiry of the deadline set for this purpose,
4.
in the event of a violation of the access ban, the violation can be determined with certainty,
5.
only the persons designated for this purpose can determine or change the time when the data is opened,
6.
access to the transmitted data is only possible if the persons designated for this purpose act at the same time and only after the specified date, and
7.
the transmitted data remain accessible only to the persons designated for information.

§ 12 VS
Prior information, contract notice, ex-ante notice

(1)

1.

As prior information, the essential characteristics of the intended construction contracts or framework agreements with at least an estimated total contract value for construction services pursuant to Section 106 (2) No. 3 GWB excluding VAT must be announced.

2.

Prior information is only mandatory if the contracting authority wishes to make use of the possibility of shortening the tender period in accordance with Section 10b VS paragraph 4. In this case, the prior information is to be provided in accordance with the requirements of column 9 in Table 2 of the Annex to Implementing Regulation (EU) 2019/1780 in conjunction with Section 10a VgV, insofar as it applies on the basis of Section 2 (3) VSVgV with regard to the provisions on the requirements of Implementing Regulation (EU) 2019/1780 and the eForms data exchange standard, including the provisions on mandatory data fields, .

3.

Prior information for information purposes only is to be deemed to be in accordance with the requirements of column 6 in Table 2 of the Annex to Implementing Regulation (EU) 2019/1780 in conjunction with Section 10a VgV, insofar as it applies on the basis of Section 2 (3) VSVgV with regard to the provisions on the requirements of Implementing Regulation (EU) 2019/1780 and the eForms data exchange standard, including the provisions on mandatory data fields, .

4.

After approval of the planning, the prior information must be transmitted to the Publications Office of the European Union as soon as possible via the Central Public Procurement Data Service or published in the procurer profile in accordance with Section 11 of the Constitution of the Federal Republic of Germany, paragraph 2; in this case, the Publications Office of the European Union shall be required to publish in advance via the central data service Public Procurement in accordance with the requirements of column 3 in Table 2 of the Annex to Implementing Regulation (EU) 2019/1780 in conjunction with Section 10a VgV, insofar as it is required on the basis of Section 2 (3) VSVgV with regard to the provisions on the requirements of Implementing Regulation (EU) 2019/1780 and the eForm data exchange standard, including the provisions on mandatory data fields must be reported, Annex VI of Directive 2009/81/EC must be observed. The prior information may also be published in daily newspapers, official publications or Internet portals.

(2)

1.

The companies are to be invited to apply for participation in the competition by means of contract notices if construction contracts within the meaning of § 1 VS or framework agreements are awarded in a restricted procedure, in a negotiated procedure with a participation competition or in a competitive dialogue.

2.

The contract notices must be prepared in accordance with the requirements of column 18 in Table 2 of the Annex to Implementing Regulation (EU) 2019/1780 in conjunction with Section 10a VgV, insofar as this applies on the basis of Section 2 (3) VSVgV with regard to the provisions on the requirements of Implementing Regulation (EU) 2019/1780 and the eForms data exchange standard, including the provisions on mandatory data fields. If the content of the contract notice is not transmitted electronically, it should not exceed 650 words. Contract notices must be published in the Official Journal of the European Union and sent to the Publications Office of the European Union without delay, in cases of accelerated procedure by fax or electronically via the Central Public Procurement Data Service.

3.

The contracting authority must be able to prove the date on which the contract notice was sent to the Publications Office of the European Union.

4.

The contract notice shall be published in the original language in the Supplement to the Official Journal of the European Union free of charge and no later than twelve calendar days after it has been sent. A summary of the main information is published in the other official languages of the European Union; the wording of the original language is authentic.

5.

By way of derogation from point 4, contract notices drawn up and transmitted electronically via the Internet portal of the Publications Office of the European Union⁹ shall be published no later than five calendar days after they have been sent.

6.

The contract notices may also be published in Germany, for example in daily newspapers, official publications or Internet portals. They may contain only the information which has been transmitted to the Publications Office of the European Union and may not be published before they are sent to that Office.

(3)

The voluntary ex-ante transparency announcement within the meaning of Section 135 (3) sentence 1 number 2 and sentence 2 of the Act against Restraints of Competition is made in accordance with the requirements of column 27 in Table 2 of the Annex to Implementing Regulation (EU) 2019/1780 in conjunction with Section 10a VgV, insofar as it is required on the basis of Section 2 (3) VSVgV with regard to the provisions on the requirements of Implementing Regulation (EU) 2019/1780 and the eForm data exchange standard, including the provisions on mandatory data fields.

§ 12a VS

Dispatch of procurement documents

(1)

1.

The tender documents must be submitted to the undertakings without delay in an appropriate manner.

2.

In the case of restricted procedures as well as negotiated procedures and competitive dialogue, the tender documents must be sent to all selected applicants on the same day.

(2) If no reproductions of the documents essential for the determination of the price can be submitted, they shall be sufficiently laid out for inspection.

(3) The names of the undertakings which have received or inspected tender documents shall be kept secret.

(4) Information on the tender documents requested in good time shall be provided to all undertakings in the same manner no later than six calendar days before the expiry of the tender period. In the case of restricted procedures and accelerated negotiated procedures pursuant to § 10b VS paragraph 6, this period shall be four calendar days.

§ 13 VS

Form and content of the offers

(1)

1.

The contracting authority shall determine the form in which the tenders are to be submitted. They must be signed. Tenders submitted electronically shall be provided at the discretion of the contracting authority with

a)

an advanced electronic signature,

b)

a qualified electronic signature,

c)

an advanced electronic seal, or

d)

a qualified electronic seal.

2.

The Client shall ensure the data integrity and confidentiality of the tenders in an appropriate manner. Tenders submitted by post or directly must be submitted in a sealed envelope, marked as such and kept under lock and key until the deadline for submission has expired. In the case of electronically transmitted tenders, this must be ensured by appropriate technical solutions according to the requirements of the client and by encryption. The encryption must be maintained until the first offer opens.

3.

The offers must include the required prices.

4.

The offers must contain the required declarations and evidence.

5.

Changes to the tender documents are not permitted. Changes made by the bidder to his entries must be beyond doubt.

6.

Bidders may use a self-made copy or abridged version of the tender specifications for the submission of tenders if they accept the wording of the specifications written by the contracting authority in the tender as the only binding one; However, abstracts must reproduce the ordinal numbers (items) in full, in the same order and with the same numbers as in the bill of quantities drawn up by the contracting authority.

7.

Samples and samples of the bidders must be marked as belonging to the tender.

(2) A service that deviates from the technical specifications provided for in § 7a VS subsection 1 may be offered if it is equivalent to the required level of protection with regard to safety, health and fitness for use. The deviation must be clearly indicated in the tender. Equivalence must be proven with the tender.

(3) The number of ancillary tenders shall be listed in a place designated by the contracting authority in the tender documents. Any ancillary offers must be prepared on a special annex and clearly marked as such. If several main bids are submitted, each must be eligible for award on its own. Paragraph 1 number 2 sentence 2 shall apply mutatis mutandis to each main tender.

(4) To the extent that price reductions are granted without conditions, they shall be listed in a place designated by the contracting authority in the tender documents.

(5) Bidding consortia shall appoint the members and designate one of their members as an authorised representative for the conclusion and performance of the contract. If the name of the authorised representative is missing from the tender, it must be provided before the contract is awarded.

(6) The contracting authority shall include the requirements for the content of the tenders pursuant to subsections (1) to (5) in the tender documents.

§ 14 VS

Opening of the offers, opening date

(1) The tenders shall be opened jointly by at least two representatives of the contracting authority on one date (opening date) immediately after the expiry of the tender period. Until this date, the electronic offers must be labelled and stored in encrypted form. Offers received by post or directly must be marked with a note of receipt on the unopened envelope and kept under lock and key.

(2)

1.

The negotiator determines whether the seal of the written offers is intact and whether the electronic offers are encrypted.

2.

The offers will be opened and marked in all essential parts on the opening date.

3.

Samples and samples of the bidders must be on hand at the appointment.

(3) A transcript of the opening date shall be prepared in text form in which the two representatives of the contracting authority shall be named. The minutes must be accompanied by a list with the following information:

a)

the name and address of the bidders,

b)
the final amounts of the offers or individual lots,

c)
unconditional discounts,

d)
Number of respective ancillary offers.

(4) Tenders received after the expiry of the tender period shall be specifically listed in the minutes or in a supplement. The times of receipt and any known reasons for which the offers were not available must be noted. The envelope and other evidence must be kept.

(5) An offer which was demonstrably received by the contracting authority before the expiry of the tender period, but which was not submitted to the negotiator, shall be recorded with all the information in the minutes or in an addendum. The bidders must be informed of this fact immediately in text form. The notification shall include the determination of whether the seal was intact in the case of written tenders and whether these were encrypted in the case of electronic tenders, as well as the information referred to in subsection 3(a) to (d). In all other respects, subsection 4 sentences 2 and 3 shall apply.

6. In restricted procedures, the contracting authority shall immediately make available to tenderers electronically the information referred to in points (a) to (d) of paragraph 3. The bidders and their authorised representatives shall be permitted to inspect the minutes and their supplements (subsections 4 and 5 as well as § 16c VS subsection 3).

(7) The minutes may not be published.

(8) The offers and their annexes are to be carefully stored and kept secret.

§ 15 VS

Clarification of the content of the offer

(1)

1.

In a restricted procedure, the contracting authority may only demand clarification from a bidder after the tenders have been opened until the contract has been awarded, in order to ascertain its suitability, in particular its technical and economic capacity, the tender itself, any ancillary tenders, the planned method of implementation, any places of origin or sources of supply of materials or components and, if necessary, the reasonableness of the prices, by inspecting the price determinations to be submitted (calculations).

2.

The results of such investigations are to be kept secret. They are to be set down in text form.

(2) If a bidder refuses to provide the required clarifications and information, or if he allows the reasonable period set for him to elapse unanswered, his bid shall be excluded.

(3) Negotiations in restricted procedures, in particular on changes to offers or prices, shall be inadmissible, except if they are necessary in the case of ancillary offers or offers based on a service programme in order to agree on unavoidable technical changes of minor scope and resulting changes in prices.

§ 16 VS Exclusion of offers

The following are to be excluded:

1.

Tenders that have not been received by the deadline,

2.

offers that do not comply with the provisions of § 13 VS paragraph 1 numbers 1, 2 and 5,

3.

Tenders that do not contain the required documents within the meaning of § 8 VS paragraph 2 number 5 if the contracting authority has determined in accordance with § 16a VS paragraph 3 that it will not request any additional documents. Sentence 1 shall apply mutatis mutandis to applications to participate,

4.

Tenders in respect of which the tenderer has not submitted declarations or evidence which the contracting authority has reserved the right to provide, upon request, within a reasonable period determined in accordance with the calendar. Sentence 1 shall apply mutatis mutandis to applications to participate,

5.

non-permitted ancillary offers as well as ancillary offers that do not meet the minimum requirements,

6.

main tenders, from tenderers who have submitted several main tenders, if the contracting authority has not allowed the submission of several main tenders in the contract notice,

7.

Ancillary offers that do not comply with § 13 VS paragraph 3 sentence 2,

8.

Main offers that do not comply with § 13 VS paragraph 3 sentence 3.

§ 16a VS

Subsequent request for documents

(1) The contracting authority shall, in compliance with the principles of transparency and equal treatment, request tenderers who are eligible for the contract to submit, complete or correct missing, incomplete or incorrect company-related documents – in particular declarations, information or evidence – or to submit missing or incomplete performance-related documents – in particular declarations, product and other information or evidence – or (additional claim), unless he has made use of his right under subsection 3. Only documents that were already to be submitted with the offer are to be requested.

(2) Missing price information may not be requested later. Bids that do not comply with the provisions of § 13 VS paragraph 1 number 3 are to be excluded. This does not apply to tenders in which the price is only missing in insignificant items and the competition and the order of evaluation are not impaired by the disregard of these items or in which these items are evaluated with the highest competitive price in each case. In this case, only the price is taken into account without taking into account any ancillary offers. The contracting authority shall request the tenderer in accordance with paragraph 1 to complete the missing price items. Sentences 3 to 5 shall not apply if the Client has excluded the subsequent request for price information in accordance with subsection 3.

(3) The contracting authority may stipulate in the contract notice or the award documents that it will not request any additional documents or price information.

(4) The documents or missing price information shall be submitted by the applicant or tenderer upon request by the contracting authority within a reasonable period of time determined in accordance with the calendar. The deadline should not exceed six calendar days.

(5) If the requested documents are not submitted within the time limit, the tender shall be excluded.

(6) Subsections (1), (3), (4) and (5) shall apply mutatis mutandis to the competition.

§ 16b VS

Suitability

In the case of restricted procedures, negotiated procedures and competitive dialogue, only circumstances are to be taken into account which, after the invitation to submit a tender, give rise to doubts as to the suitability of the bidder (see § 6b VS paragraph 4).

§ 16c VS

Examination

(1) The bids of suitable bidders, which are not excluded, shall be examined for compliance with the requirements set, in particular from a mathematical, technical and economic point of view.

1.

If the total amount of an ordinal number (item) does not correspond to the result of the multiplication of the quantity approach and the unit price, the unit price shall be decisive.

2.

If a lump sum is awarded, this applies regardless of any individual prices indicated.

(2) The final bid sums determined on the basis of the examination shall be noted in the minutes of the opening date.

§ 16d VS Evaluation

(1)

1.

A bid with an unreasonably high or low price may not be accepted.

2.

If a tender price appears to be unreasonably low and the adequacy cannot be assessed on the basis of existing documents on price determination, the bidder must be required to provide information in text form on the determination of the prices for the entire service or for partial services before the tender is rejected, if necessary by specifying a reasonable response period. In assessing appropriateness, the contracting authority – in consultation with the tenderer – examines the composition in question, taking into account the evidence provided.

3.

Only those bids are shortlisted which, taking into account rational construction operations and economical economic management, can be expected to be flawlessly executed, including liability for defect claims.

(2) In the evaluation of tenders, only award criteria and their weighting may be taken into account which are specified in the contract notice or in the award documents. The award criteria must be related to the subject matter of the contract and may include, for example: quality, price, technical merit, aesthetics, practicality, environmental characteristics, operating and follow-up costs, profitability, after-sales service, security of supply, interoperability and nature of use and technical assistance or time limit for execution.

3. Where tenders are abnormally low as a result of State aid, this shall be a ground for rejection only if the tenderer cannot prove that the aid in question was lawfully granted. The contracting authority must grant the tenderer a sufficient period of time for this proof. Contracting authorities that reject a tender despite the bidder's evidence to do so must inform the Commission of the European Union.

(4) An offer pursuant to Section 13 of the Constitution of the Constitution (2) shall be regarded as a main offer.

(5) Price reductions without conditions are not to be assessed if they are not listed in the place designated by the contracting authority in accordance with § 13 VS subsection 4. Unsolicited discounts with conditions for the payment period (cash discounts) will not be taken into account in the evaluation of the offers.

(6) The provisions of subsections 1 to 3, § 16b VS, § 16c VS paragraph 2 shall also apply to negotiated procedures and competitive dialogue. Paragraphs 4 and 5, § 16 VS and § 16c VS paragraph 1 are also to be applied mutatis mutandis to negotiated procedures and competitive dialogue.

§ 17 VS

Cancellation of the tender

(1) The invitation to tender may be cancelled if:

1.
no tender has been received that complies with the tender conditions,
2.
the procurement documents must be fundamentally changed,
3.
there are other serious reasons.

(2)

1.

Candidates and tenderers must be informed immediately in text form of the cancellation of the invitation to tender, stating the reasons and, if necessary, of the intention to initiate a new award procedure.

2.

In doing so, the Client may withhold certain information if the disclosure

- a)
obstruct law enforcement,
- b)
are contrary to the public interest,
- c)
harm the legitimate business interests of public or private companies, or
- d)
would undermine fair competition.

§ 18 VS
Surcharge

(1) The contract shall be awarded as soon as possible, but at least in sufficient time for the tenderer to receive the declaration before the expiry of the binding period.

(2) If extensions, restrictions or changes are made or if the contract is awarded late, the tenderer shall be requested to declare his acceptance without delay when the contract is awarded.

(3)

1.

The award of a construction contract or the conclusion of a framework agreement must be announced. This obligation does not apply to the award of individual contracts that are carried out on the basis of a framework agreement.

2.

The contract notice shall be prepared in accordance with the requirements of column 31 in Table 2 of the Annex to Implementing Regulation (EU) 2019/1780 in conjunction with Section 10a VgV, insofar as it applies on the basis of Section 2 (3) VSVgV with regard to the provisions on the requirements of Implementing Regulation (EU) 2019/1780 and the eForms data exchange standard, including the provisions on mandatory data fields. In the case of a negotiated procedure without competitive bidding, the contracting authority must state the reasons justifying the choice of this procedure in the contract notice.

3.

Not to be included in the contract notice are information the publication of which

a)

obstruct law enforcement,

b)

are contrary to the public interest, in particular defence and security interests,

c)

harm the legitimate commercial interests of public or private undertakings, or

d)

would undermine fair competition.

(4) The contract notice shall be transmitted to the Publications Office of the European Union electronically via the Central Public Procurement Data Service as soon as possible – no later than 48 calendar days after the contract has been awarded.

§ 19 VS
Applications and offers not considered

(1) Applicants whose applications have been rejected, as well as bidders whose bids have been excluded (§ 16 VS), and those whose bids are not shortlisted, shall be informed immediately.

(2) The contracting authority shall inform the bidders concerned whose tenders are not to be considered,

1.

the name of the company whose offer is to be accepted,

2.

on the reasons for the planned non-consideration of their bid and

3.

about the earliest date of conclusion of the contract

immediately in text form.

This also applies to candidates who have not been provided with information about the rejection of their application before the notification of the award of the contract has been issued to the tenderers concerned.

A contract may only be concluded 15 calendar days after the information has been sent in accordance with sentences 1 and 2. If the information is sent by fax or electronically, the period is reduced to ten calendar days. The period begins on the day after the Client has sent the information; the date of receipt by the applicant or tenderer concerned is irrelevant.

(3) The obligation to provide information pursuant to subsection (2) shall not apply in cases in which the negotiated procedure without a competitive bidding process is justified on grounds of particular urgency.

(4) Upon request, applicants who have not been considered shall be informed of the following without delay, but no later than within a period of 15 calendar days after receipt of their written application:

1.

the decision on the award of the contract, and

2.

the reasons for the rejection of their application, including the failure to sufficiently comply with the requirements relating to information and security of supply.

Upon request, tenderers who have submitted a proper tender shall be informed in writing of the characteristics and advantages of the successful tenderer's tender. If there is no equivalence, in particular with regard to the required information and supply security, the contracting authority shall inform the bidder thereof.

§ 17 subsection 2 number 2 shall apply mutatis mutandis.

(5) Bids and elaborations of the bidders that have not been taken into account may not be used for a new award or for other purposes.

(6) Drafts, elaborations, samples and samples of bids not considered are to be returned if this is requested in the bid or within 30 calendar days after the bid has been rejected.

§ 20 VS
Documentation

(1) The award procedure shall be documented promptly in such a way that the individual stages of the procedure, the individual measures, the relevant findings and the reasons for the individual decisions are recorded in text form. This documentation must contain at least:

1.
Name and address of the client,
2.
Type and scope of the service,
3.
the value of the contract or framework agreement,
4.
the names of the candidates or tenderers considered and the reasons for their selection;
5.
the names of the candidates or tenderers who were not considered and the reasons for the rejection,
6.
Reasons for rejecting unusually low tenders,
7.
the name of the contractor and the reasons for awarding the contract to its tender,
8.
Share of the intended transfer to subcontractors, if known,
9.
in the case of restricted procedures, negotiated procedures and competitive dialogue, reasons for the choice of the respective procedure as well as the reasons for exceeding the five-year period in § 3a VS paragraph 2 number 5,
10.
where applicable, the reasons why the contracting authority has waived the award of a contract or a framework agreement;

11.

where applicable, the reasons justifying the duration of a framework agreement in excess of seven years.

The contracting authority shall take appropriate measures to document the course of the procurement procedures carried out by electronic means.

(2) If the submission of documents and evidence requested in addition to the offer is waived, this must be justified in the documentation.

§ 21 VS

Inspection authorities

The notice and the tender documents shall indicate the review authority with the address to which the applicant or tenderer may turn for the purpose of reviewing alleged infringements of the procurement provisions.

§ 22 VS

Order changes during the contract period

(1) Significant changes to a public contract during the term of the contract require a new award procedure.

Changes that result in the public contract differing significantly from the originally awarded public contract are material. A substantial change exists in particular if

1.

the amendment introduces conditions which, if they had applied to the original award procedure,

a)

would have made it possible to admit other candidates or tenderers,

b)

would have made it possible to accept another offer, or

c)

had aroused the interest of other participants in the award procedure,

2.

the amendment shifts the economic balance of the public contract in favour of the contractor in a way that was not provided for in the original contract,

3.

the amendment significantly expands the scope of the public contract, or

4.

a new contractor shall replace the contractor in cases other than those provided for in paragraph 2(4).

2. Without prejudice to paragraph 1, the amendment of a public contract without conducting a new award procedure shall be permissible if:

1.

the original tender documents provide for clear, precise and unambiguously worded review clauses or options that contain information on the nature, scope and conditions of possible changes to the contract, and the overall character of the contract does not change as a result of the amendment,

2.

additional works have become necessary that were not provided for in the original tender documents and a change of contractor

a)

cannot be carried out for economic or technical reasons, and

b)

would entail considerable difficulties or considerable additional costs for the contracting authority,

3.

the change has become necessary due to circumstances that the contracting authority could not have foreseen in the course of its duty of care and the overall character of the order does not change as a result of the change, or

4.

a new contractor replaces the previous contractor

a)

on the basis of a review clause within the meaning of point 1,

b)

on the basis of the fact that another undertaking which fulfils the initially established eligibility requirements replaces the original contractor, in whole or in part, in the course of a corporate restructuring, such as by acquisition, merger, acquisition or insolvency, provided that this does not result in further substantial changes within the meaning of paragraph 1, or

c)

due to the fact that the contracting authority itself assumes the obligations of the main contractor towards its subcontractors.

In the cases of numbers 2 and 3, the price may not be increased by more than 50 percent of the value of the original order. In the event of several successive amendments to the contract, this limitation shall apply to the value of each individual modification, unless the modifications are made with the aim of circumventing the provisions of this Part.

(3) The amendment of a public contract without conducting a new award procedure shall also be permissible if the overall character of the contract does not change and the value of the change

1.

does not exceed the respective thresholds pursuant to Section 106 GWB and

2.

is not more than ten per cent of the original contract value in the case of supply and service contracts and not more than 15 per cent in the case of works contracts.

In the case of multiple consecutive changes, the total value of the changes is decisive.

(4) If the contract contains an indexation clause, the higher price shall be used as the reference value for the calculation of the value pursuant to subsection (2) sentences 2 and 3 and pursuant to subsection (3).

(5) Amendments pursuant to subsection (2) numbers 2 and 3 shall be made in accordance with the requirements of column 38 in Table 2 of the Annex to Implementing Regulation (EU) 2019/1780 in conjunction with Section 10a VgV, insofar as the latter applies on the basis of Section 2 (3) VSVgV with regard to the provisions on the requirements of Implementing Regulation (EU) 2019/1780 and the eForm data exchange standard, including the provisions on mandatory data fields, via the Central Public Procurement Data Service in the Official Journal of the European Union.

Appendix TS

Technical Specifications

1.

"Technical Specification" has one of the following meanings:

a)

in the case of public works contracts, all the technical descriptions contained, in particular in the tender documents, defining the properties required of a material, product or supply to enable it to fulfil the purpose intended by the contracting authority; these characteristics include environmental and climate performance levels, "design for all" (including access for persons with disabilities) and conformity assessment, performance, usability, safety or dimensions, including quality assurance procedures, terminology, symbols, test and inspection methods, packaging, marking and labelling, instructions for use, and production processes and methods at each stage of the process. life cycle of construction services; it also includes the rules for design and cost accounting, the conditions for testing, inspection and acceptance of works, the construction methods or procedures and any other technical requirements that the contracting authority is able to specify for finished works or the materials or parts necessary for them by means of general and specific regulations;

b)

in the case of public service or supply contracts, a specification contained in a document prescribing characteristics for a product or service, such as quality levels, environmental and climate performance levels, 'design for all' (including access for persons with disabilities) and conformity assessment, performance, requirements for usability, safety or dimensions of the product, including the rules on the name of sale; terminology, symbols, tests and test methods, packaging, marking and labelling, instructions for use, production processes and methods at each stage of the supply or service life cycle and conformity assessment procedures;

2.

'Standard' means a technical specification adopted by a recognised standardisation organisation for repeated or continuous application, compliance with which is not mandatory, and which falls under one of the following categories:

a)

International standard: standard adopted by an international standardisation organisation and available to the public;

b)

European standard: standard adopted by a European standardisation organisation and available to the public;

c)

national standard: standard adopted by a national standardisation organisation and available to the public;

3.

'European Technical Assessment' means a documented assessment of the performance of a construction product in relation to its essential characteristics in accordance with the relevant European Assessment Document, as defined in Article 2(12) of Regulation (EU) No 305/2011 of the European Parliament and of the Council;

4.

'common technical specifications' means technical specifications in the ICT field established in accordance with Articles 13 and 14 of Regulation (EU) No 1025/2012;

5.

'technical reference' means any reference framework, other than a European standard, developed by the European standardisation organisations in accordance with procedures adapted to the needs of the market.

year-round construction activity is promoted.