Public Procurement World - Germany

3. Procurement Procedures

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# a. What procurement procedures can be followed?

German public procurement law offers several different ways to award a contract. Contracting authorities may employ the following procedures:

open procedure, in which all interested contractors may submit a bid;

restricted procedure (two-step-procedure), in which, first, a call for competition is published and the contracting authority selects a limited number of the interested economic operators to submit a bid subsequently;

negotiated procedure with call for competition, in which, first, a call for competition is published and the contracting authority selects a limited number of the interested economic operators to submit a first bid and subsequently negotiates the terms of the contract based on the first bids with a call for final bids when negotiations have been concluded;

competitive dialogue, in which a contract notice is published and the contracting authority conducts a dialogue with the candidates admitted to that procedure with the aim of developing one or more suitable alternatives capable of meeting its requirements and on the basis of which the chosen candidates are invited to bid;

innovation partnership, in which the procedure is structured in successive phases following the sequence of steps in the research and innovation process, which may include the manufacturing of the products, the provision of the services or the completion of the works; and

in exceptional cases: direct awards, i.e. award of a contract without publishing a contract notice and/or without conducting a formal competitive procedure (also called: negotiated procedure without call for competition)

As a general rule, the open procedure as well as the restricted procedure are always permissible. Circumstances which permit the negotiated procedure, the competitive dialogue or the innovation partnership are determined in the procurement provisions. Direct awards, as the only non-competitive option, are only admissible in very exceptional cases (please refer to 7. below).

# b. What status do electronic means/procedures have?

According to paragraph 5 of section 97 GWB and paragraph 1 of section 9 VgV, which transpose Art. 22 of the Directive 2014/24/EU, contracting authorities are required to use electronic means for the entire procurement procedure by 18 October 2018 if the threshold values contained in the European Directives are equalled or exceeded.

Additionally, section 120 GWB lists the following electronic methods and tools for procurement procedures which are at present already available for use:

dynamic purchasing systems which are operated as a completely electronic process and are open throughout the period of validity of the purchasing system to any economic operator that satisfies the selection criteria. They may be used by contracting authorities for commonly used purchases the characteristics of which, like being generally available on the market, meet the requirements of the contracting authorities;

electronic auctions in which contracting authorities structure the electronic auction as a repetitive electronic process, which occurs after an initial full evaluation of the bids, enabling to rank the submitted bids using automatic evaluation methods set out by contracting authorities;

electronic catalogues which allow bidders to submit bids in accordance with the technical specifications and formats established by the contracting authority. They may be used especially for framework agreements and may contain images, price information and product descriptions.

For public procurements below the threshold values, the use of electronic means is also mandatory according to the UVgO which applies for the procurement of supplies and services which do not equal the threshold values enters into force in the beginning of 2017. The UVgO provides that public authorities are required to use electronic means. Furthermore, the contracting authorities may apply dynamic purchasing systems, electronic auctions and electronic catalogues.

# c. Where are contract notices, i.e. calls for bid, published?

EU-wide calls for bids are published on the website Bids Electronic Daily (TED):

<http://ted.europa.eu/>

TED is the online version of the Supplement to the Official Journal of the EU, dedicated to European public procurement.

In Germany, procurement procedures with the Federal Government can be viewed on the website: [www.evergabe-online.de](http://www.evergabe-online.de/). Calls for bid are also published on the website: [www.bund.de](http://www.bund.de/).

# c. Can certain prospective bidders be excluded from the competition?

The exclusion of certain prospective bidders is regulated in sections 123 and 124 GWB as well as in identical regulations in the procurement ordinances. According to these provisions, bidders who have been convicted of any of the offences listed therein have to be excluded from the competition. The relevant offences include, e.g., forming criminal organizations, money laundering, fraud and giving bribes as an incentive to the recipient's violating his official duties.

The contracting authority may furthermore exclude a bidder in cases of anticompetitive behaviour (e.g. if the respective bidder has entered into an agreement with other bidders aimed at distorting competition or if the respective bidder has made attempts to unduly influence the contracting authority), bankruptcy or upcoming insolvency, a negative contracting track-record, a grave professional misconduct, a conflict of interest, a prior involvement in the preparation of the bid which grants the respective bidder a competitive advantage which cannot be balanced otherwise (see also below under e.), or supplying misleading information during the procurement procedure. The exclusion has to be proportionate.

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