

# Business Opportunities in German Public Procurement

Enterprise Europe Network Latvia

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# ABZ – Auftragsberatungszentrum Bayern e.V.

## Services for enterprises

- Consulting services for enterprises and public buyers
- Various other services (seminars, tender alert service, pre-qualification, newsletter)

### **One topic: Public Procurement**

- Funded by the Bavarian chambers of commerce and industry and the Bavarian ministry of economic affairs
- Part of the Enterprise Europe Network

# Agenda

1. Public Market in Germany
2. Legislation
3. Publication of tenders
4. Award procedure and tender documents
5. Consideration and evaluation of tenders
6. Legal protection (remedies)



## Basic principles

- Equal treatment
- Non-discrimination
- Mutual recognition
- Proportionality
- Transparency

## Test your knowledge

|  | Yes | No |
|--|-----|----|
| <b>In an open procedures everybody may hand in a bid.</b>  |     |    |
| <b>As a Latvian company you may bid for all public tender s in Germany.</b>  |     |    |
| <b>Bids may be handed in in English.</b>   |     |    |
| <b>All tenders from public bodies have to be published.</b>  |     |    |
| <b>The procurement procedures are the same in each EU member state.</b>  |     |    |
| <b>In a negotiated procedure the contracts are awarded without competiton.</b>   |     |    |
| <b>Because of very bad weather you won't be able to hand in your bid in time. Your bid will still be accepted if you call the public buyer and inform him about the delay.</b> |     |    |
| <b>Bids can be handed in via email.</b>  |     |    |
| <b>It's always the cheapest bid that wins the tender.</b>  |     |    |



# Public market in Germany

Public market volume (2010): 478 Billion Euro / 360 Billion Euro???  
(three digit billion sum)

Approximately 30.000 public buyers.

- On the federal level (central government bodies): ministries, defense sector, motorways, Bundesagentur für Arbeit, Bundesanstalt für Immobilienverwaltung...
- On the „Länder“ level: ministries, administration, education (schools etc.), universities, police...
- On the municipality level: hospitals, schools, utilities



# Public Buyers in Germany

## On the federal level (Bund):

- Beschaffungsamt des Bundesministeriums des Inneren (IT equipment, furniture, services, consumables)  
<http://www.bescha.bund.de/>
- Bundesfinanzdirektion Südwest (office equipment, vehicles)
- Bundesamt für Wehrtechnik und Beschaffung (defense)  
<http://www.bwb.org/>
- List of public buyers  
<http://www.bund.de/Content/DE/Behoerden/Suche/Formular.htm?view=processForm&nn=4641514>

# Public buyers in Germany

## Länder Level:

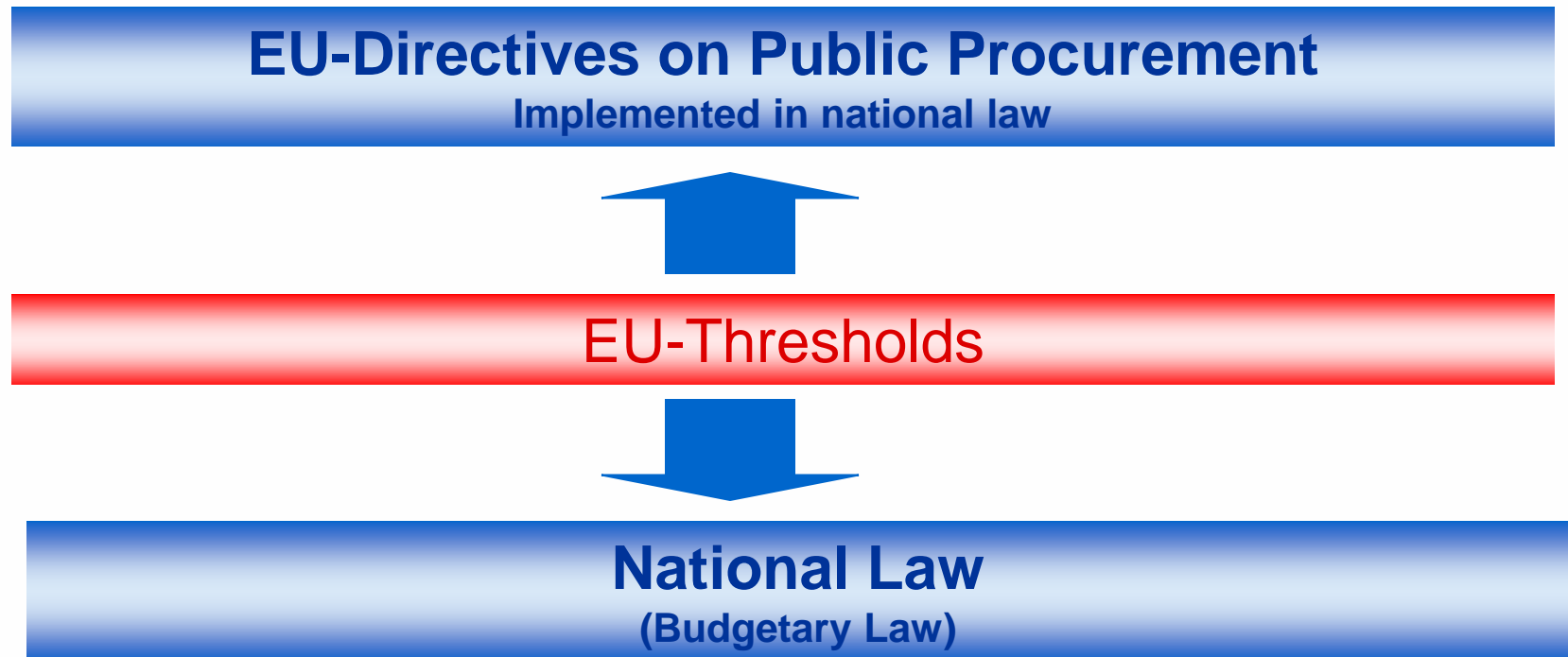
- Logistikzentrum Baden-Württemberg (Uniformen, Büroartikel, Fahrzeuge) [www.lzbw.de](http://www.lzbw.de)
- Logistikzentrum Niedersachsen [www.lzn.niedersachsen.de](http://www.lzn.niedersachsen.de)
- Gebäudemanagement Schleswig Holstein [www.gmsh.de](http://www.gmsh.de)
- Oberfinanzdirektion Frankfurt am Main (Land Hessen) <http://www.oberfinanzdirektion-frankfurt.de>
- Landschaftsverband Westfalen Lippe (schools, universities, museums, prisons) [www.lwl.org](http://www.lwl.org)

# Public Buyers in Germany

## **Utility companies:**

- Deutsche Bahn AG (Railway)
- Zweckverband Wasser- und Abwasserentsorgung (water, waste water)
- Stadtwerke (municipal utilities)
- Flughäfen (airports)
- Wasserwerke (water companies)
- Verkehrsbetriebe (transport companies)

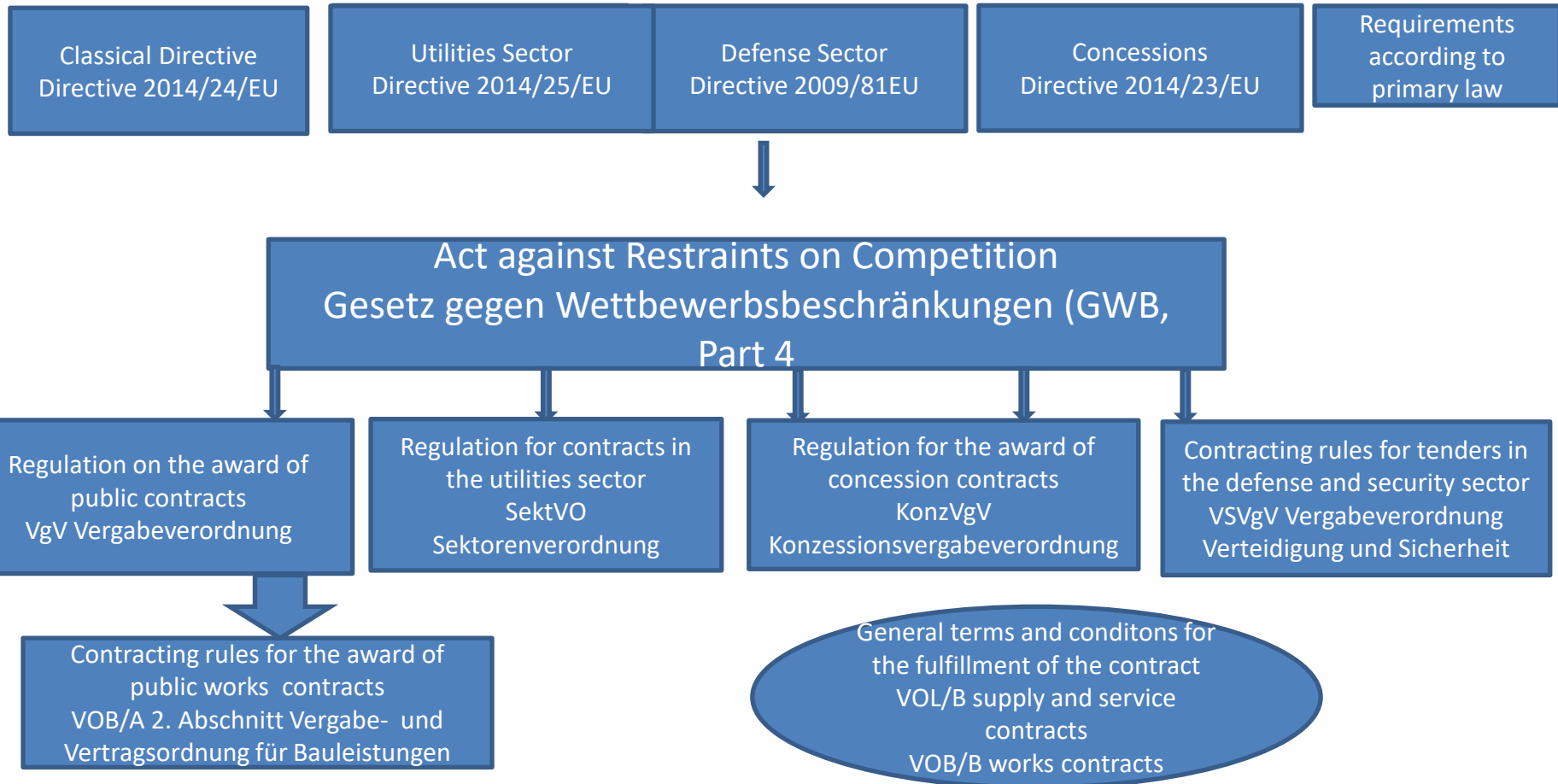
## Legal Frame



## Current EU-thresholds valid since 01.01.2016

- The current EU-thresholds for EU tenders:
  - Supply and service contracts: 209.000 €
  - Supply and service contracts awarded by central government bodies 135.000 €
  - Works contracts: 5,225 Mio. €
  - Contracts awarded in the utilities sector: 418.000 €
  - Concessions (works, services): 5,225 Mio. €
- Since 18.04.2016:
  - Social and other specific services : 750.000 €

## Structure of German public procurement legislation above the EU-thresholds



## Structure of German public procurement legislation below the thresholds

Budgetary Law

| Länder Level  | Municipalities                          |
|---|---|
| E.G. Bavarian budgetary law or procurement law in some Länder | Budgetary regulation or Procurement law |

For works contracts VOB/A  
For supply and service VOL/A

For works contracts VOB/A  
For supply and service contracts VOL/A or others

Additional regulations

# Lower value thresholds for simplified procedures (Bavaria)

| Type of procedure    | VOL (supply, services) |                                | VOB (works)  |  | Freelance services  |
|----------------------|------------------------|--------------------------------|--|--|---|
|                      | Länder Level           | Municipalities                 | Länder level   | Municipalities   |   |
| Direct purchase      | 1000 € (netto)         |                                | —  |  | Basic principles of competition non-discrimination and transparency have to be respected. |
| Three offers         | 50.000 € (netto)       | 50.000 € (netto)               | 10.000 € (netto)   | 50.000 € (netto) <sup>3</sup>  |   |
| Restricted procedure | Keine Angaben          | 100.000 € (netto) <sup>1</sup> | Finishing trade<br>50.000 € (netto)<br><br>Other trades<br>100.000 € (netto) <sup>5</sup><br><br>Civil engineering<br>Underground construction<br>150.000 € (netto) <sup>5</sup> | Finishing trade<br>125.000 € (netto) <sup>1</sup><br><br>Other trades<br>250.000 € (netto) <sup>1</sup><br><br>Civil engineering<br>Underground construction<br>500.000 € (netto) <sup>1</sup> |   |



## Link to German procurement legislation:

<http://www.bmwi.de/Navigation/DE/Themen/oeffentliche-auftraege-und-vergabe.html>



## Regulations

VOL

Regulation for supply and service contracts below the thresholds (Vergabe und Vertragsordnung für Allgemeine Bestimmungen)

VOL/A

VOL/B

General terms and conditions for the fulfillment of the contract (Allgemeine Vertragsbedingungen für die Ausführung von Leistungen)

VOB/A

Regulation for supply and service contracts (below and above the thresholds) Allgemeine Bestimmungen für die Vergabe von Bauleistungen

VOB/B, VOB/C

General terms and conditions for the fulfillment of the contract (Allgemeine Vertragsbedingungen für die Ausführung von Leistungen) Technical terms and norms)

# Regulations

SektVO

Regulation for contracts in the utilities sector  
(Sektorenverordnung)

VgV

Regulation for the supply and service contracts  
above the threshold (Vergabeverordnung)

GWB

Act against Restraints on Competition. Superordinate  
rule for all tenders above the threshold (Gesetz gegen  
Wettbewerbsbeschränkung).

## Regulations

### UVgO

Regulation for supply and service below the thresholds (Unterschwellenvergabeordnung)

To be introduced end 2017 / beginning 2018

## How does the public buyer proceed?

- Need / requirement (replacement, new tasks, need to improvement)
- Preparation of tender procedure (market research, estimation of contract value, choice of tender procedure)
- Creation of tender documents (decision on criteria of suitability of tenderers, specification, award criteria, terms and condition)
- Execution of tender procedure (publication, invitation to tender, evaluation of bids)
- Award or annulation

# Procurement guides and forms for public buyers

There are guidelines and forms that are frequently used, but no mandatory set of forms.

## Public buyer

- Are risk averse
- Have rules to respect
- Have political targets
- Strict budget
- Want a reliable partner

## Private buyer

- Take chances
- May buy what they like
- Only cost targets
- Tight budgets
- Not always fair



## Procurement procedures / Open procedures

Offenes Verfahren  
(EU)

Öffentliche  
Ausschreibung  
(national)

- There is the publication of a tender notice
- An unlimited number of bidders may hand in a bid.
- Criteria of suitability, tender specifications, award criteria, terms and conditions are stated in the tender documents.
- No negotiation possible.

## Procurement procedures / non-open procedures

Nicht-Offenes  
Verfahren (EU)

Beschränkte  
Ausschreibung  
(national)

- Public buyer may chose between the open and non-open procedures
- Publication of a call for competition is compulsory.
- Above the thresholds theses publications have to provide a direct link to all the tender documents.
- If there has been a prior information notice, there might be no further publication of a call for competition.
- Only a limited number of competitors will be asked to hand in a bid.
- The choice of competitors that are asked to hand in a bid will be done according to the set criteria of participation.
- No negotiation

# Procurement procedures

Verhandlungs-  
verfahren (EU)

Freihändige Vergabe  
(national) or  
Verhandlungsvergabe

- Procedures may be chosen only for reasons stated in the procurement legislation.
- Usually there has to be a call for competition (not below the thresholds)
- Only the competitors that have passed the criteria for participation will be asked to hand in a bid.
- In some cases the competitors are contacted directly without prior call for competition.
- There is the possibility to negotiate.

# Framework agreements

Rahmen-  
vereinbarungen (EU  
and national)

- A contract between the public buyer between one or several companies.
- Contract volume and sometimes the prices haven't been determined in procurement process
- Ideal for recurring needs.
- Commodities and recurring services.

Maximum duration of framework contracts (EU) 4 years (§ 21 Abs. 6 VgV)

Maximum duration of framework contracts (national) 6 years (§ 15 Abs. 4 UVgO)

## How to succeed!

- Know the market (use Tender electronics daily)
  - Does your product fit?
  - Study tender specifications.
  - Evaluate tender award notices.
  - Who are your competitors?
  - Are there possibilities for subcontracting?
  - Use information for joint bid with local partners.

## How to succeed!

- Check your capacities.
  - Do you have a chance to win?
  - Do you have the resources to write the bid?
  - Do you meet the minimum requirements with regard to criteria of suitability?
  - Can you deliver?
  - Can you win and make money?

## How to succeed!

Be meticulous and precise when preparing the bid

- Read **everything** carefully.
- Don't make assumptions! **ASK!**
- Write clearly and concisely – keep it simple.
- Just hand in what is required.
- Follow the structure of the tender documents.

If you're not successful, try to find out why.





# Publication of tender notices

Mandatory platform for the publication of tenders only for tenders above the EU-threshold

[Ted.europa.eu](http://ted.europa.eu)

## Publication of tender notices below the EU-thresholds

There is no central platform where all tender notices have to be published, but various platforms. It depends a lot on the region / Land.

Most comprehensive database which is free of charge:

[www.bund.de](http://www.bund.de)

## Public tender platforms:

### **Bavaria:**

[www.auftraege.bayern.de](http://www.auftraege.bayern.de)

[www.vergabe.bayern.de](http://www.vergabe.bayern.de)

### **Bund:**

[www.bund.de](http://www.bund.de)

### **Tender services**

[www.cats-plus.de](http://www.cats-plus.de) and others

## Tender platforms:

Nordrhein-Westfalen: [www.evergabe.nrw.de](http://www.evergabe.nrw.de)

Rheinland-Pfalz: [www.vergabe.rlp.de](http://www.vergabe.rlp.de)

Saarland: [www.amtsblatt.saarland.de](http://www.amtsblatt.saarland.de)

Sachsen: [www.vergabe24.de](http://www.vergabe24.de)

Sachsen-Anhalt: [www.evergabe.sachsen-anhalt.de](http://www.evergabe.sachsen-anhalt.de)

Schleswig-Holstein: [www.gmsh.de](http://www.gmsh.de), [www.dataport.de](http://www.dataport.de)

Thüringen:

<http://www.portal.thueringen.de/portal/page/portal/Serviceportal>



## Criteria for participation / suitability

- Mandatory and optional exclusion grounds

### Selection criteria:

- Suitability to pursue the professional activity
- Economic and financial standing
- Technical and professional ability

## Criteria for participation / suitability

Requirements shall be appropriate to ensure that a candidate or tenderer has the legal and financial capacities and the technical and professional abilities to perform the contract. All requirements shall be related and proportionate to the subject-matter of the contract.

Standard are self-declarations

- Forms that have to be filled in and signed
- Self-declaration (copy wording of the legislation!)

## Criteria for participation / suitability

- European Single Procurement Document (ESPD) has to be accepted as a preliminary prove for suitability
- Not often provided by the public buyer in Germany
- Buyers have to check with requirements in the tender documents.
- Has to be handed in in the required language.

For a list of criteria for suitability please go to:

<https://ec.europa.eu/growth/tools-databases/ecertis/>



The screenshot shows a Mozilla Firefox browser window displaying the eCertis website. The address bar shows the URL <https://ec.europa.eu/growth/tools-databases/ecertis/>. The browser's menu bar includes 'Datei', 'Bearbeiten', 'Ansicht', 'Chronik', 'Lesezeichen', 'Extras', and 'Hilfe'. The website header features the European Commission logo and the text 'GROWTH Internal Market, Industry, Entrepreneurship and SMEs'. A navigation menu includes 'Single Market and Standards', 'Industry', 'Entrepreneurship and SMEs', 'Access to finance for SMEs', and 'Sectors'. The main content area is titled 'Welcome to e-Certis' and contains the following text:

eCertis is the information system that helps you identify different certificates requested in procurement procedures across the EU.

If you are a European company wishing to participate in a public procurement procedure, or if you are a public buyer that has to evaluate bids received from various Member States, e-Certis can help you understand what evidence is requested or provided by the other party. Just enter the description of the document used for proving the fulfilment of the exclusion or selection criteria in a given procedure. The search function is supported in any of the EU languages.

*Please note that e-Certis is a reference tool and not a service of legal advice. It does not guarantee that the information resulting from a query will be recognised as valid by a contracting authority. It is just an information tool which helps you identify and recognise the certificates and attestations that are most commonly requested in the context of procurement procedures of different Member States. The information contained in the database is provided by the national authorities and updated on a regular basis.*

For more information about e-Certis and how it is related to the European Single Procurement Document, [click here](#).

Below the text is a search bar with a 'Search' button and a dropdown menu currently set to 'Germany'. The browser's taskbar at the bottom shows several open applications, including 'Anlage1-1-2 der Verd...', 'EEN Latvia.pptx - Mic...', '02 EU\_Bewerbungsb...', '04 EU\_Eigenerklärung...', and 'eCertis - Mozilla Fir...'. The system clock in the bottom right corner shows the date '22.05.2017' and the time '13:06'.

## Evaluation of suitability of candidates/bidders

### **Open procedures:**

Proves of suitability have to be handed in with the bid.

### **No-open / Restricted procedures:**

Proves of suitability have to be handed in with the request to participate. Only bidders that meet the set criteria will be asked to hand in a bid.

# Pre-qualification

## **PQ-Certificate for national tenders**

Prequalification for public works tenders: <http://www.pq-verein.de/>

Prequalification for supply and service contracts:  
<http://www.pq-vol.de/>

## Official lists of approved economic operators and certification

Member states may establish or maintain either official lists of approved contractors, suppliers or service providers...

Economic operators from other Member States shall not be obliged to undergo such registration or certification in order to participate in a public contract.

The contracting authorities shall recognise equivalent certificates from bodes established in other Member States.

## Opening of bids

### **Supply and service contracts**

Bids are opened, marked, documented and stored in a secure place.

The opening of the bids is not public.

Bids and the documentation have to be treated as confidential.

## Opening of bids

### **Public works contracts**

The opening is documented, names and the final sums of the bids are noted and logged. Bidders have to file a formal request and then they will be informed about the name of the bidders and the noted final sums of all offers.

§ 14 VOB/A

## Evaluation of bids (supply and service contracts) – open procedures

- Bids are checked for completeness and mathematical accuracy
- 4 steps of evaluation
  - 1) Formal check
  - 2) Evaluation of suitability  
(decision whether a bidder is suitable or not)

## Evaluation of bids

- 3) Check whether prices are adequate
- 4) Evaluation of tender according to set award criteria

Changes of award criteria are not possible.

Criteria of suitability are no longer relevant in the final evaluation step.





## More quizzes ...

|  | Yes | No |
|--|-----|----|
| <b>You made a mistake when calculating your price. May you withdraw your offer?</b>  |     |    |
| <b>In the tender documents there is no reference to general terms and conditions. May you add your own company's general terms and condition?</b>                  |     |    |
| <b>You forgot to hand in a required declaration? Is it possible to hand it in after the deadline for submitting the bid?</b>                                       |     |    |
| <b>You worked as a consultant for the public buyer, is it possible to participate in the actual tender?</b>  |     |    |
| <b>The tender validity has expired, but because of unforeseen sick leave the public buyer hasn't awarded the contract yet. Do you have to accept the contract?</b> |     |    |
| <b>In the tender documents there is no weighting of the award criteria which are price and quality. Do you offer your best price?</b>                              |     |    |
|  |     |    |
|  |     |    |
|  |     |    |



# Electronic Procurement

The public buyer decides how the bids have to be handed in (electronically, by post)

For tenders above the thresholds the use electronic means will be mandatory from October 2018.

Exceptions are possible.

## Various technical solutions for electronic procurement

- Public buyers have to provide the necessary electronic tools.
- For tenders above the threshold no digital signature is required. Bidders just upload the bid within the e-procurement system and provide personal details on who is responsible as signatory.



# Review procedures

## Review procedures for procurement procedures below the thresholds

**For public work contracts:**

**Review body: VOB Stellen.**

Their contact details have to be named in the tender documents.

**For supply and work contracts**

Limited review procedures according to procurement legislation of the respective Land. Review bodies have to be named in the tender documents. Some Länder don't have legal protection to stop the award of a contract.

**IMPORTANT:** Complaints must be filed before the award of a contract.

Complaints for damages are always possible.



## Review procedures for procurement procedures above the thresholds ( § 160 GWB)

- Every company that is interested in the public tender can file a complaint.
- The company has to describe how the claimed infringement of rules causes a damage.
- Identifiable violation of rules have to be indicated to the public buyer within 10 days or before submission deadline.

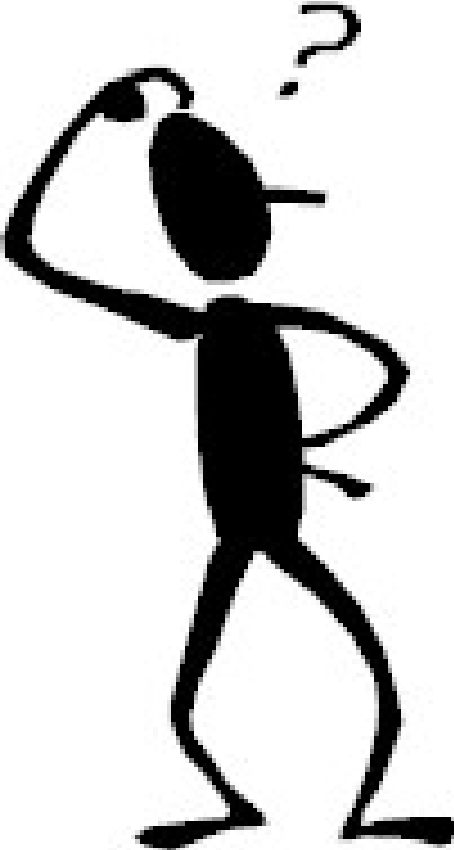
Important: Contact the public buyer immediately and ask for clarification or correction of mistakes.

## Standstill period (above thresholds only)

**Before awarding a contract** the public buyer has to inform the bidders or competitors whose bid or application will not be accepted about:

- **The reasons why the bid or application was not accepted**
- **The name of the bidder who is foreseen to win the contract**
- **The scheduled date of the award of contract**

The public buyer has to wait ten days (if this information is sent by email or fax) or 15 days (if this information is sent by post) before he may award the contract.



**Contact details:**

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