

Procurement Procedures

Guidelines

EIT Health e.V.

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1. Preliminary notes

EIT Health e. V. has to comply with different procurement rules for the award of contracts for goods and services. The sets of rules to be observed depend on the content and the value of the contract and the basis of its financing.

The following cases are to be discerned:

- a) contract value \geq € 209.000,00 net (value valid until 31.12.2017): obligation to implement a Europe-wide procurement procedure (see section 3.1).
- b) contract value $<$ € 209.000,00 net, within the scope of a grant of the State of Bavaria: compliance with the collateral provisions of the grant (ANBest-P): in particular application of the VOL/A, Section 1, and further guidelines (see section 3.2).
- c) contract value $<$ € 100.000,00 net, within the scope of a grant of the State of Bavaria: compliance with the collateral provisions of the grant (ANBest-P): in particular application of the VOL/A, Section 1, and further guidelines (see section 3.3).
- d) contract value $<$ € 30.000,00 net, within the scope of a grant of the State of Bavaria: compliance with the collateral provisions of the grant (ANBest-P): in particular application of the VOL/A, Section 1, and further guidelines (see section 3.4).
- e) contract value $<$ € 209.000,00 net, not within the scope of a grant of the State of Bavaria (see section 3.5).
- f) Exemption: Services of independent professionals (“Freiberufler”) (see section 3.6).

2. General principles of each procurement procedure / each assignment

Regardless of content and volume of the designated contract each award procedure should be performed according to the principles of equal treatment, non-discrimination and transparency. Contracts shall be awarded in competition through transparent award procedures to skilled, efficient and reliable (qualified) enterprises.

The contract is to be awarded to the economically most advantageous offer. The relevant criterion might be the lowest price, or the price in combination with other transparent and objective criteria to achieve the best value for money.

Contracts shall generally be subdivided into partial lots or by type or trade (technical lots). Such divisions or separations need not be made if this is justified by economical or technical reasons.

Finally, the requirements of the Statutes of the EIT are to be observed (e. g. EIT Financial Guide, paragraph IV. 1. e) and Specific Grant Agreement, paragraphs 8 and 11).

3. Procurement procedures

3.1. Contract value > € 209,000.00 net: EU-wide procedure

If in consideration of all renewal and expansion options the value of the contract exceeds **€ 209,000.00 net** for the entire term of the contract, a European-wide procurement procedure must be carried out according to the regulations of the GWB and VgV. Those procedures are run by the management.

Additional guidelines

- Umweltrichtlinien Öffentliches Auftragswesen – öAUmWR) Bekanntmachung der Bayerischen Staatsregierung vom 28. April 2009 Az.: B II 2-5152-15,
- Richtlinien für die Beteiligung kleiner und mittlerer Unternehmen und freier Berufe bei der Vergabe öffentlicher Aufträge (StAnz Nr. 49 S. 1) WVMBI 1984 136
- Richtlinien für die Berücksichtigung bevorzugter Bewerber bei der Vergabe öffentlicher Aufträge - Spätaussiedler, Werkstätten für Behinderte und Blindenwerkstätten, Verfolgte - AllMBI. 1993 S. 1308 StAnz. 1993 Nr. 48

are to be respected.

3.2. Contract value < € 209,000.00 net, within the scope of a grant of the State of Bavaria

If in consideration of all renewal and expansion options the value of the contract is estimated **below € 209,000.00 net (but above € 100,000.00 net)** for the entire term of the contract usually an **open procedure (“Öffentliche Ausschreibung”)** must be carried out according to the regulations of the VOL/A, Section 1. Those procedures are run by the management.

Additional guidelines

- Umweltrichtlinien Öffentliches Auftragswesen – öAUMwR) Bekanntmachung der Bayerischen Staatsregierung vom 28. April 2009 Az.: B II 2-5152-15,
- Richtlinien für die Beteiligung kleiner und mittlerer Unternehmen und freier Berufe bei der Vergabe öffentlicher Aufträge (StAnz Nr. 49 S. 1) WVMBI 1984 136
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are to be respected.

3.3. Contract value < € 100,000.00 net, within the scope of a grant of the State of Bavaria

If in consideration of all renewal and expansion options the value of the contract is estimated **below € 100,000.00 net (but above 30,000.00 net)** for the entire term of the contract, a **restricted procedure** (“**Beschränkte Ausschreibung**”) according to the regulations of the VOL/A, Section 1, is applicable (see Bekanntmachung des Bayerischen Staatsministeriums des Innern vom 14. Oktober 2005: „Vergabe von Aufträgen im kommunalen Bereich“, Az.: IB3-1512.4-138, zuletzt geändert durch Bekanntmachung vom 12. Dezember 2012 (AllMBI 2013 S. 6) (see Annex).

Those procedures are run by the management. The initiation of the procurement process (invitation to tender) and the award require the approval of two members of the management board.

For contracts exceeding an order value of € 25,000.00 net¹ to be procured in a **restricted procedure** (“**Beschränkte Ausschreibung**”)

- an ex-ante contract notice in the manner set out in § 19 para. 5 VOB/A (analogous) (**ex-ante publication**) is required on internet portals (<https://www.vergabe.bayern.de/>). This information shall include at least the following:
 - name of the contracting authority as well as its address data,
 - type of award,
 - type and scope of performance,
 - place of delivery or completion,
 - period of delivery or completion.

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- an ex-post contract award notice in the manner set out in § 19 para. 2 VOL/A (ex-post publication) is required for a duration of three months on internet portals (<https://www.vergabe.bayern.de/>). This information shall include at least the following:
 - name of the contracting authority as well as its address data,
 - name of the contracted enterprise,
 - type of award,
 - type and scope of performance,
 - period of delivery or completion.

The information from the ex-ante and ex-post publication must be available for download from the central platform for competition Bayern (<https://www.vergabe.bayern.de/>).

For contracts exceeding an order value of € 75,000.00 net a waiting period of seven calendar days between the ex-ante publication and the call for tenders is to be respected.

A sufficient number of candidates (at least three to at least ten, depending on the market situation and value of the contract) are to be invited to submit an offer. The number is to be explained in the documentation.

At least one candidate and – if the contract value exceeds 75,000.00 € net - at least three candidates with business headquarters outside of the city of Munich are to be invited.

Candidates are to be interchanged periodically.

Organizational and optionally personnel measures (e. g. according to Korruptionsbekämpfungsrichtlinie vom 13. April 2004, AllMBI S. 87, geändert durch Bekanntmachung vom 14. September 2010, AllMBI S. 243) are to be implemented to prevent manipulation and corruption.

Additional guidelines

- Umweltrichtlinien Öffentliches Auftragswesen – öAUMwR) Bekanntmachung der Bayerischen Staatsregierung vom 28. April 2009 Az.: B II 2-5152-15,
- Richtlinien für die Beteiligung kleiner und mittlerer Unternehmen und freier Berufe bei der Vergabe öffentlicher Aufträge (StAnz Nr. 49 S. 1) WVMBI 1984 136
- Richtlinien für die Berücksichtigung bevorzugter Bewerber bei der Vergabe öffentlicher Aufträge - Spätaussiedler, Werkstätten für Behinderte und Blindenwerkstätten, Verfolgte - AllMBI. 1993 S. 1308 StAnz. 1993 Nr. 48

are to be respected.

3.4. Contract value < € 30.000.00 net, within the scope of a grant of the State of Bavaria (procedures run by the staff)

Note: Whereas the procedures according to section 3.1 - 3.3 are run by the management, this procedure for contracts up to a contract value of € 30.000.00 net are responsibly run by the staff.

If in consideration of all renewal and expansion options the value of the contract is estimated **below € 30,000.00 net** for the entire term of the contract, a **negotiated procedure** (“**Freihändige Vergabe**”) according to the regulations of the VOL/A, Section 1, is applicable (see Bekanntmachung des Bayerischen Staatsministeriums des Innern vom 14. Oktober 2005: „Vergabe von Aufträgen im kommunalen Bereich“, Az.: IB3-1512.4-138, zuletzt geändert durch Bekanntmachung vom 12. Dezember 2012 (AIMBI 2013 S. 6).

Also in a negotiated procedure competition is to be safeguarded. A sufficient number of candidates (at least three) has to be invited to submit an offer.

At least one candidate with business headquarters outside Munich is to be invited.

Candidates are to be interchanged periodically.

An ex-post contract award notice in the manner set out in § 19 para. 2 VOL/A (ex-post publication) is required for a duration of three months on internet portals (<https://www.vergabe.bayern.de/>). This information shall include at least the following:

- name of the contracting authority as well as its address data,
- name of the contracted enterprise,
- type of award,
- type and scope of performance,
- period of delivery or completion.

A procurement documentation according to the template in the Annex is to be established.

The initiation of the procurement process (invitation to tender) and the award require the approval of Finance and one member of the management board.

Up to an order value of € 500, - net direct purchasing without tendering procedure is permitted with the prior approval of one member of the management board.

Additional guidelines

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- Richtlinien für die Beteiligung kleiner und mittlerer Unternehmen und freier Berufe bei der Vergabe öffentlicher Aufträge (StAnz Nr. 49 S. 1) WVMBI 1984 136
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are to be respected.

3.5. Contract value < € 209.000.00 net, not within the scope of a grant of the State of Bavaria (paid by Membership fees or by EIT KAVA)

Section 3.4 is to be applied analogously if the contract is not financed by Bavarian grant funds, with the following exceptions:

- The need to obtain three offers, applies only above a contract value of € 10,000 net.
- The initiation of the procurement process (invitation to tender) and the award for a contract value exceeding € 30,000.00 net require the approval of two members of the management board.
- The correspondence and documents of the procedure must be kept stored for the purpose of future reviews and audits; however, a procurement documentation according to the template in the Annex is not necessary.

In case the contract might potentially be of interest to economic operators located in other Member States there is a need for an ex-ante notice (see section 3.3 analogously). The decision if the contract might potentially be of interest to economic operators located in other Member States has to be based on an evaluation of the individual circumstances of the case, such as the subject-matter of the contract, its estimated value, the specifics of the sector concerned (size and structure of the market, commercial practices, etc.) and the geographic location of the place of performance.

3.6. Exception: Services of an independent professional activity

For services performed as part of an independent professional activity (“Freiberufliche Leistungen”) or offered in competition with independent professionals (“Freiberufler”) (e. g. tax consultants, lawyers, engineers, etc.; not to be confused with “freelancers”)

are generally awarded directly below the EU-threshold, since according to § 1, 2nd indent, the VOL/A is not applicable. Section 3.5 applies.

4. Procurement process (Procedures 3.2 - 3.4)

4.1. Selection and capacities of undertakings

In the restricted or negotiated procedures, EIT Health preselects undertakings on the basis of documents and information certifying sufficient personal, financial and technical capacities for the invitations to tender. Self-declarations regarding these capacities might be demanded by EIT Health. If grounds are provided in the documentation, requests for evidence other than self-declarations from the bidders are suitable.

Candidates can be excluded from participation in the competition, if

- a) bankruptcy proceedings or similar legal proceedings have been initiated against their assets, a petition for such proceedings has been filed or has been rejected for lack of sufficient assets,
- b) they are in the process of liquidation,
- c) they are guilty of grave misconduct, which casts doubt on their reliability as a candidate,
- d) they have failed to meet their due obligation to pay taxes and fees or contributions to social security,
- e) they have made incorrect statements on their suitability in the award procedure.

If a tenderer has advised or otherwise assisted the contracting authority prior to the commencement of the award procedure, the contracting authority must ensure that Competition is not distorted through the participation of this tenderer or candidate.

SME are to be invited in restricted and negotiated procedures regularly to an adequate extent.

4.2. Contract content and specifications

The contract content and specifications must be described clearly and exhaustively, so that all candidates must understand the description in the same way and comparable tenders are to be expected (contractual specifications).

The contractual performance or parts of it must be described in adequate detail employing customary designations as to type, quality and scope. Otherwise it can be described

- a) by purpose, function and other requirements it must meet,

- b) by means of its essential features and constructional details or
- c) by combining these types of description.

Specific brands of products or processes or specific places of origin or supply sources may only be explicitly prescribed if this is warranted by the type of performance contract to be awarded. Designations for specific makes of products or processes (e.g. brand names) may be employed in exceptional cases, if a description cannot be made with adequate precision using customary designations, but only when accompanied by the wording 'or equivalent'.

The addition 'or equivalent' can be omitted, if product specification is warranted on objective grounds. Such grounds are if the contracting authorities would have to procure products or processes with different features to those already available to them and this would entail unreasonable financial outlay or unreasonable difficulties in integration, application, operation or maintenance. These grounds must be documented.

4.3. Tender Documents

Tender documents must contain all the information required to be able to make a decision on participation in the award procedure or on tendering. As a rule, they must consist of

- a) the invitation to submit a tender or covering letter for the submission of the requested documents,
- b) details on procedure (terms and conditions for application) including specification of award criteria, where not already cited in the notice and
- c) the contractual documents consisting of the contractual specifications and terms and conditions.

If EIT Health requires documents from the bidders, those are to be compiled in a definitive list in the tender documents.

4.4. Contractual Terms and Conditions

The General Terms and Conditions for Supply and Service Contracts (VOL/B) have been made the subject-matter of the contract, e. g. by adding the sentence "*Die Allgemeinen Vertragsbedingungen für die Ausführung von Leistungen (VOL/B), aktuelle Ausgabe, sind Vertragsbestandteil*".

Additional general terms and conditions may not contradict VOL/B. To meet the requirements of a group of similar individual cases, supplementary terms and conditions can provide for derogations from VOL/B.

4.5. Time Limits

Sufficient time limits must be set for the preparation and submission of tenders as well as the tender validity period.

4.6. Form of tenders

The contracting authorities shall specify in what form the tenders are to be submitted.

Generally, EIT Health shall for the purpose of documentation require tenderers to submit the tenders

- signed and
- in a sealed envelope, with an indication of its content on the envelope (e. g. “*Do not open – Tender procedure*”)

During invitations to tender, the contracting authorities must ensure that the tenders are kept intact and confidential. Tenders must be left unopened, provided with a date stamp and – on the last day of the submission time limit: also the hour of receipt – and signature of the recipient and must be kept under seal until expiry of the tender submission time limit.

4.7. Opening of tenders

The opening of the tenders shall be conducted and documented jointly by at least two representatives of EIT Health. At a minimum, a record shall be made of:

- a) the name and address of the tenderers,
- b) the final amounts of their tenders and other information concerning the price,
- c) whether alternative tenders have been submitted and by whom.

The tenders and their annexes as well as the documentation on opening of tender must also be kept safe and confidential after completion of the award procedure.

They have to be handed out properly ordered to the Finance department.

4.8. Evaluation of tenders

The tenders must be verified for completeness and the accuracy of factual information and calculations.

Declarations and evidence required as part of the tender which were not submitted before expiry of the tender submission time limit might be subsequently requested (from all tenderers concerned) within an (equal for all) extended time limit. This does not apply for a subsequent request for price quotations, unless these pertain to insignificant individual items which unit prices do not alter the total price or do not impair evaluation procedure and competition.

Ineligible are:

- a) tenders which do not contain the declarations and evidence requested or subsequently requested,
- b) tenders that are not signed,
- c) tenders in which entries altered by the tenderer are not beyond reasonable doubt,
- d) tenders where changes or additions have been made to the tender /contractual documents,
- e) tenders that have not been submitted in due form and time, unless this is not the responsibility of the tenderer,
- f) tenders from tenderers who have reached inadmissible agreements restricting competition with respect to the award,
- g) inadmissible alternative tenders.

In addition, tenders may be excluded from tenderers who could also have been ineligible for participation in competition as candidates (see above 4.1 and § 6(5) VOL/A).

In the selection of tenders eligible for award, only tenderers may be considered that are qualified to perform the contractual obligations (see above 4.1).

If a tender appears to be abnormally low in relation to the service to be rendered, EIT Health shall require the tenderer to provide an explanation. No contract shall be awarded for tenders whose prices are evidently out of keeping with the contractual performance.

When evaluating tenders, EIT Health shall take complete and sole account of the criteria cited in the notice or tender documents.

4.9. Documentation

The award procedure must be continually documented from the outset to keep a record of the individual stages of the procedure, the individual measures and the grounds for the individual decisions.

Annex:

- Procurement Policy overview
- VOL/A, english version
- procurement documentation template
- Bekanntmachung des Bayerischen Staatsministeriums des Innern vom 14. Oktober 2005: „Vergabe von Aufträgen im kommunalen Bereich“, Az.: IB3-1512.4-138, zuletzt geändert durch Bekanntmachung vom 12. Dezember 2012 (AllMBl 2013 S. 6)
- Umweltrichtlinien Öffentliches Auftragswesen – öAUmwR) Bekanntmachung der Bayerischen Staatsregierung vom 28. April 2009 Az.: B II 2-5152-15,
- Richtlinien für die Beteiligung kleiner und mittlerer Unternehmen und freier Berufe bei der Vergabe öffentlicher Aufträge (StAnz Nr. 49 S. 1) WVMBl 1984 136
- Richtlinien für die Berücksichtigung bevorzugter Bewerber bei der Vergabe öffentlicher Aufträge - Spätaussiedler, Werkstätten für Behinderte und Blindenwerkstätten, Verfolgte - AllMBl. 1993 S. 1308 StAnz. 1993 Nr. 48