



Conditions of application and participation

1. Purpose of these conditions of participation

As a public contracting authority, the Federal Agency for Foreign Affairs (hereinafter also “Contracting Authority”) has launched a tendering procedure. This is subject to the public procurement law regulations applicable at the time of the launch of the procedure. The legal basis for the tendering procedure is specified in the notice or the invitation to tender.

These conditions of application and participation are an integral part of the documents that the Contracting Authority makes available to the interested companies so that they can prepare a request for participation or a tender. They provide concrete information on the tendering procedure and instructions for preparing a request for participation or a tender.

The documents sent by the Contracting Authority are to be treated confidentially and may only be used to prepare the request for participation or the tender. No publication (even in extracts) or circulation is permissible without the approval of the Contracting Authority. If a candidate / tenderer or a candidate / tendering consortium does not come into consideration or does not submit a request for participation / a tender, all documents are to be destroyed. Those employees concerned with writing the request for participation / tender are to be bound to secrecy and confidentiality accordingly.

2. Name and address of the Contracting Authority

Federal Agency for Foreign Affairs
Kirchhofstraße 1 – 2
14776 Brandenburg
Germany

3. Provision of the tender documents

The full tender documents are available as a free download on the [federal e-Vergabe platform](#)¹.

In the case of open procedures or public tenders and calls for competition, the tender documents may be downloaded without the need for registration. Companies are themselves responsible for checking the [federal e-Vergabe platform](#)² to find out whether the tender documents for the procedure they are interested in have been updated by the Contracting Authority during the submission period for the request for participation or tender. Registered companies will automatically be informed of any updates. Registration is possible via this [link](#)³:

In the case of non-public procedures, negotiated procedures, restricted invitations to tender or negotiated tendering, the complete tender documents will likewise be made available to eligible enterprises via the [federal e-Vergabe platform](#)⁴.

Each participating company is obliged to check that the tender documents are complete after downloading them.

¹ <https://www.evergabe-online.de>

² <https://www.evergabe-online.de/search.html;jsessionid=4C8BE62D6988CA485B1DF30FD9BE8D69?0&ids=792#results>

³ https://www.evergabe-online.info/e-Vergabe/DE/3%20Unternehmen/Erste%20Schritte/node_Erste_Schritte.html

⁴ <https://www.evergabe-online.de>

4. Queries about the tender documents

Each company is itself responsible for clarifying all details of the tendering procedure that are relevant for participation. If the documents for the tendering procedure are incomplete, unreadable or the company considers them to contain ambiguities, the company is to point this out to the Contracting Authority immediately and ask for clarification. If it fails to do this, it cannot claim at a later date that the documents contained ambiguities.

The Contracting Authority is available to answer queries. Queries must always be submitted electronically via the [federal e-Vergabe platform](#)⁵, making reference to the relevant tendering procedure. Queries by telephone are not permitted and will not be answered. In the context of queries, the respective tender number must always be given as a reference. This number is specified in the notice or the invitation to tender.

Supplementary information concerning a tendering procedure (e.g. information for tenderers) is published on the [federal e-Vergabe platform](#)⁶ or sent electronically to all companies involved in the tendering procedure. The query itself is only published or circulated insofar as this is possible while maintaining confidentiality. In order to ensure that additional information requested can also still be sent to the other interested parties in time if necessary, the queries must reach the Contracting Authority in good time. Questions that are submitted later do not have to be answered.

5. Prohibited changes

No additions or changes may be made to the tender documents sent by the Contracting Authority except where designated (fields on forms). Any changes or additions to the tender documents may lead to exclusion. If tenderers consider it necessary to provide explanations in connection with their tender, these must be given separately.

6. Candidate / tendering consortia

Candidate / tendering consortia are permitted to take part in tendering procedures. However, the burden of coordination must not be placed on the Contracting Authority. If the intention is to submit a request for participation or tender as a candidate / tendering consortium, the candidate / tendering consortium must appoint an authorised representative who will serve as the consortium's contact person for the Contracting Authority in the further course of the procedure. To this end, a power of attorney must be submitted along with the tender.

Evidence of the reliability and the good economic and financial standing of each member of a candidate / tendering consortium must be provided. The candidate / tendering consortium as a whole is responsible for demonstrating its technical performance capacity (technical ability). The information and explanations required in the tender documents therefore only need to be submitted for a member of a candidate / tendering consortium insofar as this member is contributing their capabilities to the joint tender.

EXAMPLE: Member A has sufficient qualified personnel, while Member B has the required references. Member A submits the supporting documents for the personnel. Member B, in turn, provides the references documenting the technical capabilities.

It is not permissible for a candidate to submit requests for participation as a member of more than one candidate consortium. Such conduct is to be regarded as an illegal anti-competitive agreement and will lead to the exclusion of all requests for participation involving that company. The same applies if members of a tendering consortium also submit tenders as individual tenderers.

If a tendering consortium is charged with performing the services, it is obliged to form a company with joint and several liability and an authorised representative.

7. Form and submission of your request for participation and tender

Requests for participation and tenders are to be written **in German or English**, using the forms provided by the Contracting Authority. A certified German translation of all information and

⁵ <https://www.evergabe-online.de>

⁶ <https://www.evergabe-online.de>

supporting documents in languages other than German or English (e.g. certificates from foreign authorities) must be provided alongside a copy of the foreign-language original.

There is no advantage to be gained from the design of the request for participation being unusual or elaborate. It must be ensured that the request for participation / the tender is **complete** and specifically includes all the required declarations and supporting documents. Information provided by the tenderer / the tendering consortium in the tender can only be supplemented by references to images, brochures, product information sheets or other literature if the tender contains a clear explanation of the extent to which these annexes are relevant for evaluating the tender. Annexes are not a replacement for the answers or explanations required, but can supplement them. These annexes must be clearly listed and marked accordingly. Where images or documents are referred to, these must be attached, otherwise the answers and explanations will be deemed not to have been submitted. If explanations or supporting documents are missing, the Contracting Authority may at its discretion request that these be submitted subsequently and grant a grace period for this purpose; the candidates / tenderers or candidate / tendering consortia have no rights in this regard. Incomplete participation or tender documents may lead to exclusion of the request for participation or the tender.

Requests for participation / tenders must be received by the Contracting Authority **before** the submission deadline expires. Requests for participation / tenders that are received late shall be excluded from the rest of the procedure unless the late receipt is due to circumstances for which the candidate / tenderer or the candidate / tendering consortium is not responsible. Proof of these circumstances must be provided. Individual extensions to the deadline cannot be granted. Please note that it is the date of receipt of the request for participation / tender by the Contracting Authority that is relevant for meeting the submission deadline.

Requests for participation / tenders are to be submitted electronically via the [federal e-Vergabe platform](https://www.evergabe-online.de)⁷ in text form in accordance with section 126b of the German Civil Code (BGB). If you have any questions, the e-Vergabe platform⁸ provider can be contacted by phoning +49 (0)228 99610 1234 or emailing support@bescha.bund.de. No signature / electronic signature is required to submit the documents electronically via the e-Vergabe platform. However, it is desirable that all documents made available via the platform be processed and returned in the data format in which they were published to ensure seamless electronic processing of the application (PDF scans should be avoided). This is particularly important for AIDF, GAEB (P84, X84), DOCX and PDF files. Use of ZIP files or comparable data formats should be avoided. Furthermore, care should be taken to ensure that the content of all submitted files can be browsed electronically.

The documents submitted to the Contracting Authority become the property of the Contracting Authority unless the candidate / tenderer or the candidate / tendering consortium expressly reserves the right to have individual documents returned to them after the tendering procedure has been completed. If a candidate or a candidate consortium intends to use information from their tender to file for industrial property rights, this must be expressly indicated in the tender with a precise description of this information.

Samples can only be returned if specifically requested and where return postage is supplied.

With the submission of a tender, the tenderer / tendering consortium declares its consent to its name and the order value being **subsequently announced** in accordance with the applicable public procurement regulations, should its tender lead to it being awarded the contract.

8. Submission deadline

The latest date for submission of the request for participation or the tender (submission deadline) is found in the notice or the invitation to tender.

9. Changes, corrections and withdrawal of the request for participation / tender

A request for participation or a tender may only be changed, corrected or withdrawn completely until such time as the submission deadline expires. Such changes, corrections or withdrawals

⁷ <https://www.evergabe-online.de>

⁸ Procurement Office of the Federal Ministry of the Interior.

must be communicated electronically in text form in accordance with section 126b of the German Civil Code (BGB).

10. Assessment of eligibility

In the case of public tenders or calls for competition, the eligibility of a candidate / tenderer or a candidate / tendering consortium is assessed according to the **eligibility criteria** specified in the applicable public procurement regulations (Statutory Exclusion Criteria) and in the notice of the tendering procedure (Additional Exclusion Criteria). Proof of the existence of the exclusion criteria is provided in the form of a declaration by the candidate / candidate consortium or the tenderer / tendering consortium. This is an integral part of the tender documents. Submission of false declarations may have criminal and civil law consequences with regard to the future award of public contracts.

A candidate / tenderer may – also as a member of a tendering consortium – use the capabilities of other companies (third parties) as evidence of its performance capacity and technical ability, regardless of the legal character of the connections existing between it and the third party in question. The candidate / tenderer or the candidate / tendering consortium must provide this information in the tender. A relevant form can be requested from the Contracting Authority free of charge. Third parties within the meaning of this provision are only those which “lend” their eligibility to the candidate / tenderer or the candidate / tendering consortium and which the candidate / tenderer or the candidate / tendering consortium, as the contractor, intend to use to meet their contractual obligations, i.e. which will work directly within the context of the contractual duties of the contractor. Subcontractors must provide evidence of their eligibility in accordance with the tender documents, insofar as the candidate / tenderer or the candidate / tendering consortium draws on their performance capacity and technical ability. The third party must provide evidence of its reliability in every case.

EXAMPLE: Tenderer A has the necessary references but not sufficient qualified personnel. Tenderer A therefore involves Enterprise B as a third party. Tenderer A must provide the required references. Enterprise B, as the third party, must provide the information required to prove that the personnel has sufficient experience.

Assessment of eligibility in a call for competition:

A call for competition may be a component of a tendering procedure (1st stage of the tendering procedure). It serves solely to assess whether a candidate or a candidate consortium is eligible to provide the required services. The public contracting authority can limit the number of candidates that are called to submit a tender in the further course of the tendering procedure. In this case, only the most eligible candidates will be considered. The number of candidates is stipulated in the notice of the call for competition. The relevant evaluation criteria are included in the tender documents for the call for competition.

The public contracting authority calls the eligible candidates to submit tenders in the further course of the tendering procedure (2nd stage of the tendering procedure).

11. Checking and evaluation of tenders

Tenders from eligible tenderers are checked according to **formal, substantive, technical, arithmetical and economic criteria**. In principle, tenders are evaluated 100% on the basis of the tender price. Contingency items are not taken into account, unless provided otherwise in the tender documents.

If quality criteria have been specified in a tendering procedure, these are also taken into account when evaluating the tender. **Calculation of the price / quality ratio** is based on the method specified in the tender documents in accordance with the IT procurement guidelines (UfAB 2018). Further details are available under this [link](#)⁹.

The contract will be awarded to the **most cost-effective tender**.

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http://www.cio.bund.de/Web/DE/IT-Beschaffung/UfAB/ufab_node.html

12. Informing unsuccessful candidates / tenderers

Unsuccessful candidates / tenderers will be informed in good time in accordance with the applicable public procurement regulations.

13. Reimbursement of costs

The costs of participating in the tendering procedure, including writing the request for participation, are borne by the candidate / tenderer. The Contracting Authority will not refund expenses. Neither will costs incurred by the candidate / tenderer for destroying tender documents be refunded by the Contracting Authority.

14. Processing of personal data

The Federal Agency for Foreign Affairs uses personal data for the purpose of communication with candidates and tenderers, to assess their eligibility (technical ability and performance capacity) and to evaluate tenders (cf. sections 122 and 127 of the GWB). The processing of the data is therefore lawful pursuant to Article 6, paragraph 1 (f) of the General Data Protection Regulation (GDPR) in conjunction with section 3 of the Federal Data Protection Act (BDSG), because it is necessary for the performance of tasks within the remit of the Federal Agency for Foreign Affairs. Further information can be found in a [fact sheet](#)¹⁰ that is available as a download.

15. Review

The review authority for tendering procedures pursuant to the Federal Budget Code (BHO), the Rules of Procedure Governing Supply and Service Contracts Below the EU Thresholds (UVgO) and section 1 of the Award and Contract Procedure for Construction Services (VOB/A) is the

Federal Foreign Office
Division 118 (funding management, purchasing management and control)
Werderscher Markt 1
10117 Berlin

For tendering procedures pursuant to the Contract Award Regulations (VgV), the Regulations on Contract Awards in Defence and Security (VSVgV) and the Award Regulations on Concessions (KonzVgV), the following applies:

Companies have the right vis-à-vis the public Contracting Authority to compliance with the regulations protecting candidates in the tendering procedure. If a company interested in a tender believes that its rights have been infringed due to non-compliance with public procurement regulations, the infringement must immediately be reported to the Contracting Authority (section 160 (3) 1 of the Act against Restraints on Competition (GWB)).

Infringements identified on the basis of the notice or the other documents made available within the context of the tendering procedure must be reported to the Contracting Authority before the submission deadline specified in the notice. If the Contracting Authority informs the company that it is unwilling to redress the objection, the company can file an application for review with the Public Procurement Tribunal only within a period of 15 days following receipt of the notification of the Contracting Authority's unwillingness to redress the objection (section 160 (3) 4 GWB).

The Federal Public Procurement Tribunals at the Bundeskartellamt (Federal Cartel Office)
Villemombler Str. 76
53123 Bonn / Deutschland
Tel: +49 228 94990
Fax: +49 228 9499400

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<https://www.auswaertiges-amt.de/blob/2128914/8ff52fba3b39c74c27109b7be926f05/merkblatt-dsgvo-data.pdf>

16. Performance of the contract

- **German law** shall apply.
- If a tender is awarded, the following **documents become integral parts of the contract**:
 1. Terms of reference
 2. Tender documents where it is stated that these are an integral part of the contract
 3. Tender from the tenderer.
- The Contracting Authority is entitled to **withdraw from the contract for good cause** if there are grounds for exclusion under the applicable public procurement regulations, in particular the granting of benefits (section 333 of the Criminal Code) and bribery (section 334 of the Criminal Code). It is likewise entitled to do so in the event of submission of tenders that are based on collusive agreements within the meaning of section 298 of the Criminal Code as well as in the event of participation in unlawful restraints on competition pursuant to the Act against Restraints on Competition (GWB), particularly an arrangement with third parties on the submission or non-submission of a tender, on prices to be charged, on the payment of compensation for loss of profits (profit sharing or other charges) and on the setting of recommended prices.
