

**Tendering and Contract Award Terms of the State of NRW  
for the Award of Public Contracts for Goods and Services in Accordance with  
the Regulation on Sub-Threshold Procurement  
(*Unterschwellenvergabeordnung, UVgO*)**

## **1. General**

- 1.1. The contracting authority shall conduct itself in accordance with the Regulation on Sub-Threshold Procurement (*Unterschwellenvergabeordnung, UVgO*). The provisions of the UVgO can be viewed in the Internet portal [www.vergabe.nrw.de](http://www.vergabe.nrw.de). Other provisions of state law remain unaffected.
- 1.2. All communication in the procurement procedure is to be conducted exclusively through the procurement marketplace of the state of NRW at [www.evergabe.nrw.de](http://www.evergabe.nrw.de).

## **2. Tendering terms**

- 2.1 The forms provided by the contracting authority are to be used for the procurement procedure.
- 2.2 If, in the company's opinion, the procurement documents are incomplete, or contain ambiguities or errors, it must notify the contracting authority electronically without delay through the communication room of the procurement marketplace of the state of NRW at [www.evergabe.nrw.de](http://www.evergabe.nrw.de) before submitting a tender.
- 2.3 The tender must be complete; it must include prices and all required information and declarations; the possibility of a subsequent request for documents in accordance with § 41 UVgO remains unaffected.

Changes that the tenderer makes to its registration data must be unequivocal.

Changes and amendments to the procurement documents, in particular the performance specifications and contract terms, are not permitted. This applies in particular to the Contractor's own General Terms and Conditions (GTC).

Secondary tenders may only be submitted if they are expressly permitted in the invitation to tender. The performance included in the secondary tenders must be described clearly and exhaustively. The tenderer must provide proof of the equivalence of the secondary tender and required performance.

In the case of electronic tender submission, the tender must be submitted electronically in text form in accordance with § 126b of the German Civil Code (*Bürgerliches Gesetzbuch, BGB*) or, if necessary, signed in exceptional cases at the request of the contracting authority.

For tenders submitted by mail, provided this has been expressly permitted by the contracting authority, the tender document (Form 324) and all annexes that must be signed are to bear the name (company name) and signature of the tenderer.

Please refer to accompanying Form 312/322 for detailed information on the form of tender submission.

If submission of tenders by email during the negotiation procedure is permitted, the tender can be submitted electronically in text form in accordance with § 126b BGB, i.e. the name of the person and, if applicable, the company submitting the tender must be identifiable from the email.

**Tenders that do not satisfy the requirements above will be excluded.**

**Please also note the following:**

If explanations appear necessary for better assessing the tender, they can be included with the tender in a special annex.

Requested samples must be identified as belonging to the tender and must be submitted by mail or other suitable manner, if possible in a sealed envelope, container or similar, by the tender submission deadline.

Secondary tenders that are expressly permitted in the invitation to tender must be submitted in a separate annex and identified as secondary tenders. Secondary tenders that are not appropriately identified may be excluded.

- 2.4 If the tenderer intends to use information from its tender to apply for industrial property rights, it must indicate this in its tender.
- 2.5 The contracting authority reserves the right to only take a discount into account in the assessment if a discount period of at least 14 calendar days is provided. Please refer to the accompanying Contract Terms of the State of NRW (Form 512 or 512a) with regard to the start of the period and payment.
- 2.6 If the procurement procedure includes a tender from a recognized workshop for people with disabilities, workshop for the blind or inclusive business (hereinafter referred to as preferred tenderers) that is as economically advantageous as the otherwise most economically advantageous tender from a tenderer that is not a preferred tenderer in this respect, the contract will be awarded to the preferred tenderer. When assessing the economics of the tenders, the price offered by preferred tenderers shall be taken into account with a discount of 15%. In order for the discount to be taken into account, the preferred tenderers must produce a substantial portion of the goods offered. This is, in particular, the case if the value added by their employees is more than 10% of the net value of the goods purchased.
- 2.7 No remuneration will be provided for the preparation of tenders.
- 2.8 Drafts and samples that are not used up during the review of the tenders shall become the property of the contracting authority with no claim to remuneration, unless provided otherwise in the invitation to tender or the tenderer does not request their return in the tender or within one month after the end of the binding period. The tenderer shall bear the cost of returns.

### **3. Anticompetitive agreements / SME cartels**

In order to combat restraints of competition, upon request the tenderer must provide information on whether and in what manner it is economically and legally affiliated with companies.

Tenders from tenderers that are involved in anticompetitive agreements in connection with this contract award procedure will be excluded.

Agreements between companies and the formation of cartels of small and medium-sized entities (SME) are exempt from § 1 of the Act against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen*, GWB) under certain conditions. The conditions can be found in §§ 2, 3 GWB. A declaration to this effect must be provided in the tender document (Form 324).

### **4. Candidate and tenderer consortia**

Candidate consortia, tenderer consortia and other joint tenderers must provide the names of their members and the name of one member as the authorized representative for conclusion and performance of the contract in the confirmation of interest, request to participate or tender (Form 531). The candidate/tenderer consortium declaration must be submitted together with the confirmation of interest or, with the request to participate in the case of a call for competition or otherwise with the tender. The confirmation of interest, request to participate or the tender must be submitted by the authorized representative.

Any self-declarations that must be submitted from all participants of the tenderer consortium will be deemed submitted when they have been electronically submitted with the first name and surname or the name of the company on the self-declaration form.

The reasons for forming the candidate or tenderer consortium must be provided upon request.

All members of the tenderer consortium shall be jointly and severally liable to the contracting authority.

## **5. Capacities of other companies (subcontracts, capacity borrowing (*Eignungsleihe*))**

### **5.1 Subcontracts**

If the tenderer intends to have parts of the performance executed by other companies (subcontractors), the tenderer must name these parts of the performance in the tender (Form 533a). At any time it so chooses before awarding the contract, the contracting authority can require the tenderer to submit proof that the resources it will require from the subcontractor will be available (Form 533b).

Regarding any grounds for exclusion in accordance with § 123 GWB or § 124 GWB, reference is made here to § 36, para. 5 of the Regulation on the Award of Public Contracts (*Vergabeverordnung*, VgV).

As warranted, the contracting authority can require the tenderer to submit to the contracting authority proof from the subcontractor to the tenderer before awarding the contract.

### **5.2 Capacity borrowing**

If the tenderer intends to borrow the capacity of another company in regard to the necessary economic, financial, technical or professional capacities (*Eignungsleihe*), the tenderer must name the capacities that are to be borrowed in the request to participate in the case of a call for competition or otherwise with the tender.

The tenderer must show evidence that the other companies will make the required capacities available to the tenderer and that these companies are suitable (Form 534a).

If the tenderer borrows the capacities of other companies to satisfy the criteria for economic and financial capacity, upon the request of the contracting authority those companies can be jointly liable for contract performance. The declaration of liability (Form 534b) is to be signed and scanned by the capacity lender, then submitted in the request to participate in the case of a call for competition or otherwise with the tender.

Regarding any grounds for exclusion in accordance with § 123 GWB or § 124 GWB, reference is made here to § 34, para. 2, sentence 2 in conjunction with § 26, para. 5 UVgO.

As warranted and at any time during the tendering process, the contracting authority can require the tenderer to submit to the contracting authority evidence from the capacity lender to the tenderer.

## **6. Prequalification**

Companies registered in the prequalification databases <https://amtliches-verzeichnis.ihk.de> or [www.pq-verein.de](http://www.pq-verein.de), or another database within the EU that is free of charge for the contracting authority, can indicate this when submitting a request for participation or tender by providing the registration number. If the contracting authority requires evidence that is not contained in the prequalification databases, such evidence must also be submitted. Otherwise, the company may be excluded from the procurement procedure.

Companies that are not prequalified can submit a self-declaration (European Single Procurement Document) with the tender or request for participation as provisional evidence of their suitability for providing the performance being procured, provided this document is expressly permitted as provisional evidence by the contracting authority. If the tender makes it onto the short list, the self-

declaration must be confirmed upon separate request by submitting the certificates of the competent bodies specified in the self-declaration. Certificates that are not written in German must be accompanied by a German translation.

## **7. Other provisions**

- 7.1** Prices are to be indicated in euros.
- 7.2** The request for participation or tender must be written in German. If evidence or tender documents in foreign languages are submitted, certified translations must be provided upon the request of the contracting authority. The costs for this shall be borne exclusively by the tenderer. The tenderer must allow translation errors to be attributed to it.  
  
Communication with the contracting authority must be conducted in German.
- 7.3** German law shall apply in addition to the procurement documents.
- 7.4** If, after the procurement procedure has been concluded by award of the contract, candidates/tenderers have not received information to this effect by the end of the binding period, the request for participation/tender was not successful. The candidate or tenderer can request certain information on unsuccessful candidatures or tenders from the contracting authority electronically via the communication room of the NRW procurement marketplace.
- 7.5** Candidates from other EU member states must observe the special value-added tax regulations for intra-community acquisitions.