

Tendering and Contract Award Terms of the State of NRW for the Award of Contracts for Goods and Services in Accordance with the Regulation on the Award of Public Contracts (*Vergabeverordnung, VgV*)

1. General

- 1.1** The contracting authority shall conduct itself in accordance with the provisions of the Act against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen, GWB*) and the Regulation on the Award of Public Contracts (*Vergabeverordnung, VgV*). **The provisions can be viewed in the Internet portal www.vergabe.nrw.de.**

The candidate or tenderer has a legal right to application of these provisions. To review alleged violations of these procurement provisions, the candidate or tenderer may turn to the procurement chamber (*Vergabekammer*) specified in the notice.

- 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.

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 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 § 56 VgV 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 or required in the invitation to tender. They must satisfy the minimum requirements contained therein. The performance included in the secondary tenders must be described clearly and exhaustively.

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.

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

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

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.

Samples must be identified as belonging to the tender.

Secondary tenders that are expressly permitted or required in the invitation to tender must be submitted in a special annex and clearly identified as such. Secondary tenders that are not submitted in the proper form 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 EU) with regard to the start of the period and payment.
- 2.6 No remuneration will be provided for the preparation of tenders.
- 2.7 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 EU).

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 EU). 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 EU). 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 EU).

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.

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 EU) 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 § 47, para. 2, sentence 3 in conjunction with § 42, para. 1 VgV.

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, or another database within the EU that is free of charge for the contracting authority, can indicate this when submitting a request for participation, confirmation of interest or tender by providing the registration number. If the contracting authority requires evidence that is not contained in the above-mentioned 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, request for participation or confirmation of interest as provisional evidence of their suitability for providing the performance being procured. 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.

If other companies are used in accordance with section 5, self-declarations must also be submitted for these companies upon separate request, if necessary supplemented by requested contract-specific evidence. If the other companies are prequalified, indicating the registration number is sufficient, if necessary supplemented by requested contract-specific evidence.

7. Other provisions

7.1 Prices are to be indicated in euros.

7.2 The confirmation of interest, 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 The candidate or tenderer can request the information specified in § 62, para. 2 VgV 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.