

AWARDING PLANNING
SERVICES BELOW
THE THRESHOLD
VALUE OF THE PUBLIC
PROCUREMENT REGULATION
(VERGABEVERORDNUNG - VGV)
A PRACTICAL GUIDE FOR
IMPLEMENTATION OF
COMPETITION ON THE
MERITS

BUNDES
ARCHITEKTEN
KAMMER



INTRODUCTION

Architectural services should always be awarded in a competition on the merits since they cannot be clearly described in advance. This is the only way to prevent a contracting body procuring bad planning by selecting the cheapest offer. This is all the more relevant with the updated version of the Fee Structure for Architects and Engineers (Honorarordnung für Architekten und Ingenieure - HOAI) of 1 January 2021. This guide offers specific suggestions and templates which can be used as a basis for a tender procedure.

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PRINCIPLES OF CONTRACT AWARDS AND COMPETITION ON THE MERITS

Essentially the same award principles apply below the threshold value as above for public contracting bodies. Therefore awards of contracts are subject particularly to the requirements of objectivity and transparency. This should normally result in a suitable form for inviting tenders and the documentation and information provided to applicants on the result of the procedure. Furthermore, the Public Procurement Regulation formulates the principle of competition on the merits when awarding planning services, which excludes awarding a contract (exclusively) on price. However, if awards of contracts below the threshold value follow the similar principle as Public Procurement Regulation procedures, care should be taken to avoid overshooting the mark and creating unnecessary work for all concerned through excessive requirements and applying criteria which are no longer proportionate to small and often uncomplicated building works that are not subject to public procurement law.

It is also a question of avoiding undesirable developments known from public procurement regulations which result in contracts mostly being awarded only to very large or specialised firms - particularly since planning projects below the threshold have always been used to open doors and give firms, which previously were not active at all or scarcely for public authorities, access to the market for public planning projects.

What a sensible or appropriate selection procedure below the public procurement regulation threshold could look like that satisfies the interests of both the contracting authority and the applicants, raises many questions for public contracting authorities and local authorities:

- When and how should an invitation to tender be made public?
- How should the selection procedure be organised?
- How can regional applicants be included?
- How can new entrants to the market and smaller firms be considered?
- How do you manage very large numbers of applicants?
- How can the procedure be made transparent vis-à-vis applicants?
- How must or should fees quoted be included in the evaluation?

The following recommended actions describe how a method for awarding contracts below the threshold value could look that does not create any unnecessarily high obstacles, and where the contracting authority nevertheless comes to a clear and sound basis for awarding a contract. Apart from an overview which shows the various steps, supporting documentation and assessment criteria, including possible options, and a diagram showing possible combinations of the options, there are sample announcements which show how this can be transformed into concrete tender procedures. Overall it needs to be ensured that:

- the type of invitation to tender is selected that is appropriate to the construction project
- applicants can identify the requirements and whether it is worthwhile submitting a tender
- contracting authorities are given flexible tools that can be combined individually to define a sensible tender procedure
- criteria based on solutions can be integrated in order to give the appropriate weight to the architectural quality
- the decision-making process is documented clearly and communicated to all firms involved in the procedure

CALL FOR TENDERS

The manner of inviting tenders can be freely selected, subject to special regulations specific to each Land, and can range from a request sent to a number of potential applicants - e.g. on the basis of speculative applications - through press releases, a newspaper advertisement, publication on the contracting body's own internet portal, through to publication on the relevant tender platforms. However, it should be remembered that overly wide dissemination will lower the chances of regional, new, and small firms. However, the inclusion of regionally-limited admission criteria is prohibited, even for contracts below the threshold value.

MINIMUM REQUIREMENTS

The decisive factor for equal opportunities when formulating the tender procedure is that the supporting documentation required should describe exactly the minimum requirements that can be checked as yes-no criteria, but which are not subject to any further evaluation or weighting in the first instance. The type and scope of references or requirements required of applicants must be clear based on the specific task and be proportionate to the object of the tender.

REFERENCES

No more than one or two reference projects should be required; the investment volume of the reference projects should be considered acceptable if it reaches 50 per cent of the tender. It makes little sense to set a time limit on reference projects, since the experience gained from construction projects has a long life.

REQUIREMENTS FOR APPLICANTS AND TECHNICAL EQUIPMENT

If pertinent to the project, e.g. determined by deadlines, it is conceivable that a declaration be requested on the number of staff available in the office to tackle the task. Normally one to two members of staff, in addition to the office proprietor, should be sufficient for contracts below the threshold value. A requirement for more staff would be disproportionate to the economic return of the contract. Since the technical equipment of an engineering or architectural office - which can be upgraded at any time - does not play any significant role in awarding contracts, this aspect should not be included.

DRAWING LOTS

In contrast to the documentation listed, no further information on the applicants can be expected in the tender and would only lead to a disproportionate amount of work for all involved. The examples listed provide criteria which numerous architectural firms could satisfy and which, therefore, are scarcely relevant for awarding contracts. However, this is a means of indicating to applicants whether their tender would have any chance of success. All applicants who can provide the proof required here have the essential technical qualifications and can be assessed in the negotiation phase with regard to the individual quality of references, which should be assessed in a more differentiated manner. Generally a maximum of five participants for the negotiation phase is considered sensible.

If the number of qualified applicants is greatly exceeded, a selection procedure by drawing lots is to be recommended. If this option is to be reckoned with, it may be sensible to preselect one or two applicants in advance and name them in the announcement.

WEIGHTING OF THE AWARD CRITERIA

The award criteria are decisive for the award of a contract and so are crucial in the concluding negotiations. The weighting referred to here cannot be corrected subsequently and therefore requires careful consideration.

The nature of the contract requires the focus to be placed on architectural criteria since the building as a long-term result will outlast the tender procedure and consequently issues and formal aspects of the award procedure. This could be either weighting the results of a competition or the evaluation of outline proposals created and presented for the tender procedure, or the evaluation of reference projects already completed. Criteria such as aesthetic quality, functionality, economic viability, and budget adherence are important here.

If none of these criteria related to architecture are used, the main criterium for awarding the contract is project organisation, i.e. the evaluation of the designated project manager, possibly of other staff involved, their familiarity with public construction projects, details on site supervision, and how to deal with impairment of performance and variation orders.

The architect's fee as the final criterion for awarding a contract must always be determined on the basis of the Fee Structure for Architects and Engineers (HOAI); however, applicants can include additional fees or deductions. Together with scope for ancillary expenses, additional fees for modifications and special services, price competition thus joins competition on the merits. In order to consider the priority of competition on the merits for projects above the threshold as well as for projects below the threshold, the price competition should be weighted with a maximum of 20 per cent. In order for a project to be categorised by a fee structure, an assessment by points must be made which presupposes determining the degree of difficulty involved. Since the Fee Structure for Architects and Engineers does not itself provide any conclusive guidance on this point, we refer to the pertinent evaluation tables (e.g. Locher/Koebler/Frick: Kommentar zur HOAI (Commentary on the HOAI) or Rainer Eich: Ausföüllhilfen für Honorarzone. Honorarsatz. Umbauzuschlag (Hints on fee structures. Fee rates. Additional fees for modification))

REDUCING TIME AND EFFORT

The selection procedure described above keeps the effort required of participants and of the contracting authority at a reasonable level, while at the same time clearly defining how many applicants will have to undergo a differentiated examination. The integrated selection procedure by drawing lots also gives small firms and newcomers a fair chance to prove their qualifications independent of quantitative aspects (number of staff, extent of technical equipment, etc.) compared with large, established firms.

Architectural associations support and advise private and public contracting bodies free of charge on implementation.

TRANSPARENCY

The call for tenders should describe the stages of the procedure with appropriate brevity but with due detail so that applicants understand roughly how the selection procedure has been designed. Furthermore, evaluating references will always require a panel of qualified experts. Dispatching the protocol giving reasons for the selection made and the table showing the proposed fees is an important part of the procedure, serves transparency, and also protects the contracting authority against unjustified speculation and accusations.

TABLE OF PROCEDURES AND SUPPORTING DOCUMENTATION

STAGE →

Call for tenders, e.g.

- on their own internet portal
- advertisement in the local press
- press report (press release)
- contacting architects directly
(e.g. applicants who have sent in speculative applications)

Receiving applications, formal examination

Examining professional suitability

Option 1: Reducing applications to c. 5 to 8
(for Options 2 to 3) or c. 3 (to be invited
directly to the negotiation phase)

Option 2: closed competition according to the
Regulation on Planning Competitions (RPW)
with 5 to 8 participants

Option 3: Evaluation of references in order
to reduce the number of applicants

Call for tenders from the shortlist or 1st prize winner
or a group of winners, preliminary assessment of
tenders

Negotiation (possibly only with the 1st prize winner):

Option 4 (if no competition based on the Regulation
for Planning Competitions (RPW) was implemented):
Awarding contracts to multiple tenderers

concluding assessment of the
expected professional
and economic performance

SUPPORTING DOCUMENTATION →

ASSESSMENT CRITERION →

	Complete, on time? Yes/no
Supporting documentation professional qualification as architect	Supporting documentation provided? Yes/no
Declaration on up to two references (planning or implementation) with statements on invoice value, period of performance	Preliminary minimum requirements satisfied? Yes/no
Declaration on current scope of activity and qualifications of, for example, two members of staff, depending on the project	Preliminary minimum requirements satisfied? Yes/no
	Drawing lots, Creation of a shortlist
Competition submission showing a draft solution for the task in hand, sent anonymously	Architectural quality, assessment by qualified jury, selection of a group of winners
Assessment of the reference(s) submitted with regard to their architectural/functional quality	Architectural quality, assessment by a qualified panel, creation of a shortlist
Schematic outline, perhaps limited to partial aspects, of a possible solution for the task in hand, remuneration in accordance with the Fee Structure for Architects and Engineers (HOAI), presentation not anonymous	Architectural quality, professional performance, price, drawing up a ranking list based on weighting:
Presentation and explanation of the project organisation and details on the provision of services, also based on the references	possibly results of the competition (Opt. 2) 50% possibly evaluation of references (Opt. 3) 30% possibly proposed solution (Opt. 4) 30%
Explanation of the proposed fees	Project organisation 30-50-80%* Fee 20% * depending on the option chosen

CASE CONSTELLATIONS

EXAMPLE 1:

Requirements for applicants:

no special requirements

Drawing lots:

as an option

Organising

a competition:

inappropriate

Presentation of

outline proposals:

inappropriate

Call for tenders

Receiving applications, formal examination

Examining professional suitability

Option 1:

Reducing applicants to c. 3

(to be invited directly to the negotiation phase)

Negotiation

concluding assessment of the expected professional and economic performance

EXAMPLE 2:

Requirements for applicants:

design expertise

Drawing lots:

as an option

Organising

a competition:

inappropriate

Presentation of

outline proposals:

by way of example, partial aspect of the task

Call for tenders

Receiving applications, formal examination

Examining professional suitability

possibly Option 1:

Reducing applicants to c. 3

(to be invited directly to the negotiation phase)

Negotiation

Option 4:

Awarding contracts to multiple tenderers

concluding assessment of the expected professional and economic performance

EXAMPLE 3:

Requirements for applicants:

Experience in the heritage conservation

Drawing lots:

as an option

Organising

a competition:

inappropriate

Presentation of

outline proposals:

inappropriate

Call for tenders

Receiving applications, formal examination

Examining professional suitability

possibly Option 1:

Reducing applications to c. 5 to 8

(for evaluation of references already submitted)

Option 3:

Evaluation of references in order to reduce the number of applicants

Negotiation

concluding assessment of the expected professional and economic performance

EXAMPLE 4:

Requirements for applicants:

design expertise

Drawing lots:

as an option

Organising

a competition:

appropriate

Presentation of

outline proposals:

inappropriate

Call for tenders

Receiving applications, formal examination

Examining professional suitability

possibly Option 1:

Reducing applications to c. 5 to 8

(to be invited directly to the negotiation phase)

Option 2:

closed competition according to the Regulation on Planning Competitions (RPW) with 5 to 8 participants

Negotiation,
normally only with the 1st prize winner

concluding assessment of the expected professional and economic performance

SAMPLE NOTIFICATIONS

The following sample notifications are intended to illustrate the underlying structure in which calls for tenders can be advertised for planning services below the public procurement threshold value. There are no formal requirements; on the contrary, there is great scope for determining how the procedure can be designed. The following applies to all proposals, as with public procurement procedures: Criteria, and the related supporting documentation, should be minimised as far as possible, and should be formulated simply and clearly. This applies to the scope of supporting documentation, but more particularly to the content. Contracting authorities should define the absolute minimum of requirements, from their point of view; they should select applications by drawing lots if necessary from among the qualified applicants and, based on a simply structured negotiation procedure, should determine the applicant with the best qualifications. In terms of a competition on the merits, a planning competition (Case Constellation 4) is also an option for many contracts below the threshold value and should always be considered.

CASE CONSTELLATION 1: ENERGY-EFFICIENCY RETROFIT AND RENOVATION OF A PRE-SCHOOL CENTRE

Level of difficulty: simple

Requirements for applicants: Experience with alterations to existing buildings

Drawing lots: as an option

Organising a competition: inappropriate

Presentation of outline proposals: inappropriate

NOTIFICATION OF AWARD OF CONTRACT

I. CONTRACTING AUTHORITY

Municipality X

Att: Mr X

12345 Town X

Tel. 0123 . 456788

Fax 0123 . 456789

mrX@townX.co.uk

www.townX.co.uk

II. TITLE OF THE CONTRACT

Energy-efficiency retrofit and refurbishment
of a pre-school centre in town X,
refurbishment of outdoor facilities

III. DESCRIPTION/ SUBJECT OF THE CONTRACT

Planning services for building and outdoor facilities

Service phases 1-5 in accordance with Art. 34/39 HOAI
awarded on the basis of lots, total volume of investment
€950,000 gross (cost category 300-400 and 500)

IV. PLACE OF PERFORMANCE

Town X

V. OPTIONS

Commissioning of service phases 6-9 in accordance
with Art. 34/39 HOAI as a direct follow-on contract

VI. DATE

Start of work: 01.07.2021

VII. REQUIRED SUPPORTING DOCUMENTATION

Technical capability

1. Proof of authorisation to use the professional title of architect or landscape architect; architects and landscape architects can apply as a group of bidders
2. Declaration on two building construction projects, including at least one renovation (service phase 1-5 Article 34) of buildings from the 1950s to 1980s with an investment volume of at least €500,000 and containing statements on the principal, costs, and deadlines; one image per project that visualises the whole project. As an alternative to a completed project, the successful participation in a competition or publication or similar can be submitted
3. Declaration on an outdoor facility project with an investment volume of at least €100,000 and containing statements on the principal, costs, and deadlines; one image per project that visualises the whole project. As an alternative to a completed project, the successful participation in a competition or publication or similar can be submitted

4. Declaration that the architectural firm has employed at least three technical members of staff on average over the last two years (including the proprietor)
5. Statement on whether services will be subcontracted

VIII. ELIGIBILITY TO PARTICIPATE

Bidder groups of architects and landscape architects which satisfy one of the following conditions:

Physical persons

who are authorised to use

- the professional title of architect or landscape architect in accordance with Article 1 para 1 of the Architects Act of Lower Saxony (Niedersächsisches Architektengesetz (NArchTG))

Legal entities

which have their official location in the above named region

- on the day of the announcement and
- whose business purpose according to their articles of association lists planning services that match the published call for tenders and
- whose authorised representatives satisfy the professional requirements demanded of physical persons.

IX. AWARD CRITERIA AND WEIGHTING

- | | |
|-------------------------|-----|
| 1. Project organisation | 80% |
| 2. Fee | 20% |

X. CLOSING DATE FOR SUBMISSION OF APPLICATIONS

31.01.2021, 12 noon at the a.m.
address

XI. DISPATCH TO SELECTED APPLICANTS OF THE INVITATION TO NEGOTIATIONS (PROBABLE DATE AND TIME)

14.02.2021

XII. APPLICANTS ALREADY SELECTED FOR THE NEGOTIATION PHASE

Bidders group architectural firm X, town X

XIII. ADDITIONAL INFORMATION

The documentation required under VII can be submitted informally. The selection criterion for the negotiation phase is solely based on the supporting documentation specified in VII. Three applicants will be invited to the negotiation phase. If more applications should be received than intended for the negotiation phase, selection will be made by drawing lots. The invitation to the negotiation phase requires an offer which provides specific details on project organisation and fees.

The award procedure will be documented in all relevant stages. Applicants will receive the protocol within ten days of the procedure being concluded.

CASE CONSTELLATION 2: CONVERSION/PARTIAL EXTENSION OF A PRIMARY SCHOOL FOR THE CANTEEN AND ALL-DAY ACTIVITY AREA

Level of difficulty: normal

Requirements for applicants: design expertise

Drawing lots: as an option

Organising a competition: not appropriate since construction work is divided into small sections

Presentation of outline proposals: by way of example for the break rooms

NOTIFICATION OF AWARD OF CONTRACT

I. CONTRACTING AUTHORITY

Municipality X

Att: Mr X

12345 Town X

Tel. 0123 . 456788

Fax 0123 . 456789

mrX@townX.co.uk

www.townX.co.uk

II. TITLE OF THE CONTRACT

Conversion and extension of a primary school in town X
for the canteen and all-day activity area

III. DESCRIPTION/ SUBJECT OF THE CONTRACT

Planning services for buildings Service phases 1-9
in accordance with Art. 34 HOAI, total volume of
investment €950,000 gross (cost category 300-400)

IV. PLACE OF PERFORMANCE

Town X

V. OPTIONS

none

VI. DATE

Start of work: 01.07.2021

VII. REQUIRED SUPPORTING DOCUMENTATION

Technical capability

1. Proof of authorisation to use the professional title of architect
2. Declaration on two building construction projects, including at least one conversion project (service phase 1-5 Article 34) with an investment volume of at least €500,000 and containing statements on the principal, costs, and deadlines; one image per project that visualises the whole project. As an alternative to a completed project, the successful participation in a competition or publication or similar can be submitted
3. Declaration that the architectural firm has employed at least three technical members of staff on average over the last two years (including the proprietor)
4. Statement on whether services will be subcontracted

VIII. ELIGIBILITY TO PARTICIPATE

Physical persons

who are authorised to use

- the professional title of architect in accordance with Art. 1 para 1 of the Architects Act of Lower Saxony (NArchTG) on the date of the announcement

Legal entities

which have their official location in the above named region

- on the day of the announcement and
- whose business purpose according to their articles of association lists planning services that match the published call for tenders and
- whose authorised representatives satisfy the professional requirements demanded of physical persons.

IX. AWARD CRITERIA AND WEIGHTING

1. Proposed solution	30%
2. Project organisation	50%
3. Fee	20%

X. CLOSING DATE FOR SUBMISSION OF APPLICATIONS

31.01.2021, 12 noon at the a.m. address

XI. DISPATCH TO SELECTED APPLICANTS OF THE INVITATION TO NEGOTIATIONS (PROBABLE DATE AND TIME)

14.02.2021

XII. APPLICANTS ALREADY SELECTED FOR THE NEGOTIATION PHASE

Architectural firm X, town X

XIII. ADDITIONAL INFORMATION

The documentation required under VII can be submitted informally. The selection criterion for the negotiation phase is solely based on the supporting documentation specified in VII. Three applicants will be invited to the negotiation phase. If more applications should be received than intended for the negotiation phase, selection will be made by drawing lots. The invitation to the negotiation phase requires an offer which provides specific details on project organisation and fees. In addition, an outline of the proposed solution for a section of the project is expected by way of example. This should illustrate the approach and mode of operation and act as a basis for the negotiation phase and will not necessarily be a planning criterion if any further project work is commissioned. It will be remunerated at a flat rate of €4,000.

The award procedure will be documented in all relevant stages. Applicants will receive the protocol within ten days of the procedure being concluded.

CASE CONSTELLATION 3: RENOVATION AND FIRE PREVENTION MEASURES IN A LISTED URBAN VILLA

Level of difficulty: high

Requirements for applicants: Experience in the heritage conservation

Drawing lots: as an option

Organising a competition: not appropriate since the scope for action is very limited in Germany concerning the stock of listed buildings

Presentation of outline proposals: inappropriate

NOTIFICATION OF AWARD OF CONTRACT

I. CONTRACTING AUTHORITY

Municipality X

Att: Mr X

12345 Town X

Tel. 0123 . 456788

Fax 0123 . 456789

mrX@townX.co.uk

www.townX.co.uk

II. TITLE OF THE CONTRACT

Renovation and fire prevention measures in Museum building M.

III. DESCRIPTION/ SUBJECT OF THE CONTRACT

Planning services for buildings Service phases 1-9 in accordance with Art. 34 HOAI, total volume of investment €950,000 gross (cost category 300-400)

IV. PLACE OF PERFORMANCE

Town X

V. OPTIONS

none

VI. DATE

Start of work: 01.07.2021

VII. REQUIRED SUPPORTING DOCUMENTATION

Technical capability

1. Proof of authorisation to use the professional title of architect
2. Declaration on two building construction projects, including at least one renovation project in a listed building (service phase 1-5 Article 34) with an investment volume of at least €500,000 and containing statements on the principal, costs, and deadlines; four images per project that visualise the whole project. As an alternative to a completed project, the successful participation in a competition or publication or similar can be submitted
3. Declaration that the architectural firm has employed at least three technical members of staff on average over the last two years (including the proprietor)
4. Statement on whether services will be subcontracted

VIII. ELIGIBILITY TO PARTICIPATE

Physical persons

who are authorised to use

- the professional title of architect in accordance with Art. 1 para 1 of the Architects Act of Lower Saxony (NArchG) on the date of the announcement

Legal entities

which have their official location in the above named region

- on the day of the announcement and
- whose business purpose according to their articles of association lists planning services that match the published call for tenders and
- whose authorised representatives satisfy the professional requirements demanded of physical persons

IX. AWARD CRITERIA AND WEIGHTING

1. Evaluation of references	30%
2. Project organisation	50%
3. Fee	20%

X. CLOSING DATE FOR SUBMISSION OF APPLICATIONS

31.01.2021, 12 noon at the a.m. address

XI. DISPATCH TO SELECTED APPLICANTS OF THE INVITATION TO NEGOTIATIONS (PROBABLE DATE AND TIME)

14.02.2021

XII. APPLICANTS ALREADY SELECTED FOR THE NEGOTIATION PHASE

Bidders group architectural firm

X, town X and landscape

architects X, town Y

XIII. ADDITIONAL INFORMATION

The documentation required under VII can be

submitted informally. Selection criterion for the

negotiation phase will be primarily the supporting

documentation specified in VII. The quality of

references in terms of architecture and preservation

of listed buildings will then be assessed by a panel

of experts and a shortlist drawn up. Three applicants

will be invited to the negotiation phase. If more firms

are on the shortlist than intended for the negotiation

phase, selection will be made by drawing lots. The

invitation to the negotiation phase requires an offer

which provides specific details on project organisation

and fees.

The award procedure will be documented in all

relevant stages. Applicants will receive the protocol

within ten days of the procedure being concluded.

CASE CONSTELLATION 4: EXPANSION OF THE TOWN HALL WITH A COUNCIL CHAMBER AND CITIZENS' FORUM

Level of difficulty: normal

Requirements for applicants: design expertise

Drawing lots: as an option

Organising a competition: appropriate

Presentation of outline proposals: inappropriate

NOTIFICATION OF AWARD OF CONTRACT

Depending on the type of procedure for the competition procedure selected, various examples of announcements can be downloaded from the architectural associations of the Länder.

→ www.architektenkammer.de

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