

Public Procurement in Germany

Jost de Jager, Emily Haentschel

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Structure

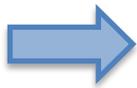
1. Overview of the German e-procurement system
2. Private vs. public platforms
3. Securing public funds
4. Reviewing tender decision
5. Conclusion

1. Overview of the German e-procurement system

- **German e-procurement system is decentral**
 - In Germany there is no central public procurement system. Procurement of the different state agencies mirrors the federal structure:
 - Federal level
 - State level
 - Local governments



Every level is in charge of their own procurement processes in terms of administration and technology.



On federal level all ministries and authorities are accountable for their own procurement processes but there is a tendency to use central and state owned platforms.

1. Overview of the German e-procurement system

- **Legal foundations for procurement in Germany on all levels:**
 - European Law: EU Directive 14/24
 - Mandatory EU-wide tenders and use of e-procurement above a **defined threshold**
 - All EU-wide tenders must be announced in the **Tender Electronic Daily (TED)**
 - National Law: Act against Restraints on Competition (GWB)
 - Binding procedures for tenders and appeals for all federal and administrative levels
- **Threshold:** in general **214.000 €**; but there are specific thresholds for tenders concerning construction work, defence or the commission of licences
- It is not compulsory to use e-procurement platforms for **below-threshold** tenders; here a different set of procedures can be applied (restricted tenders, negotiated purchases)
- **90 %** of all public tenders are **below the threshold**

1. Overview of the German e-procurement system

- **Various platforms** to choose from
 - Progressively one central **state-owned** platform is used at the federal level (*see examples*)
 - Federal states use platforms of their own, in general state-owned (*see examples*)
 - Local authorities buy and use parts of private platforms or use the respective federal state's platform
 - **Technical administration** of the platform can be outsourced to **private** companies
- **Participation** on platform is always **free** as a principle
 - Idea is open and competitive neutral access to public assignments and not to discourage companies from bidding
 - **Background:** on the German market it is sometimes problematic to find firms interested in bidding for public tenders – private sector contracts are sometimes more profitable

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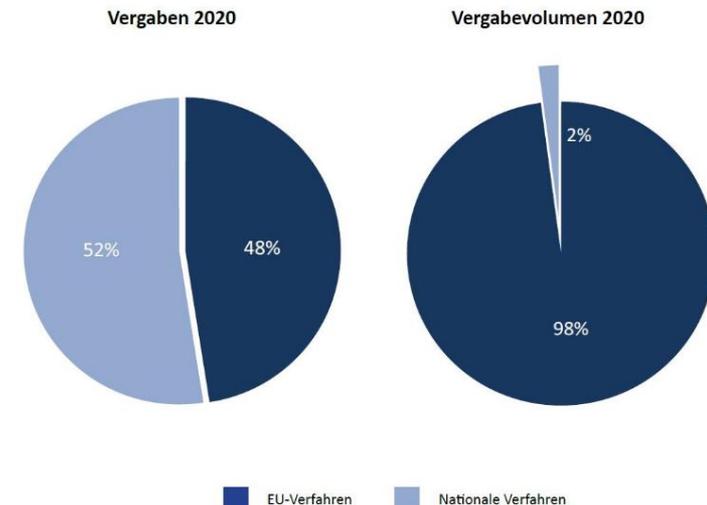
Example for a state owned e-procurement platform on federal level



Federal Agency for Procurement of the Ministry for the Interior

Cases and volume of EU-wide tenders of Bundesbeschaffungsamt

- Largest technical procurement agency of the Federal state
- Central institution for e-procurement within the federal government (without defence and construction)
- Volume of 4.6 bn. €
- 327 employees



1. Overview of the German e-procurement system

Example for a state owned e-procurement platform at the state level



Facility Management of Schleswig-Holstein

- Central procurement agency of the federal state of Schleswig-Holstein
- Mandatory use of GMSH's e-procurement platform for all state institutions since 2001
- Platform is provided and operated by the state
- Optional use of the platform by local authorities
- Volume of 400 m €

2. Private vs. public platforms

- **Private** e-procurement platforms are easier to set up initially
- Competing private providers allow for more diversity and innovation
- **BUT:** it is more difficult to change particularities of the platform (particularly for small public entities) and there are bigger data privacy and corruption concerns involved

Tendency in Germany: use of **state-owned platforms** and **outsourcing of technical administration** in order to incentivise some quality competition

- Different technical administrators offer different systems regarding construction of the platform and payment for administration services (monthly rate or per tender)
- All providers must guarantee anonymity and information transparency for all bidders as well as strictly digital communication on the platform (no personal contact)

3. Securing public funds

- **Philosophy** is to check the financial, technical and personnel related capacity of bidders
- **Measures** employed to secure public money **depends on value of tender**
- Several measures to choose from which can partly substitute each other:
 - Statement of financial position (might disadvantage innovative start-ups)
 - Business liability insurance
 - Self-declaration
 - Excerpt from the trade register
 - Use system of pre-qualifications based on turnover, certificates, number of employees etc.
 - Bank guarantees (only for big tenders; height depends on sector and tender value; can be up to 120% of tender value)
 - List of references
- From the purchaser it needs a project controlling and as a general rule: ***(partial) payment only after (partial) service provision***

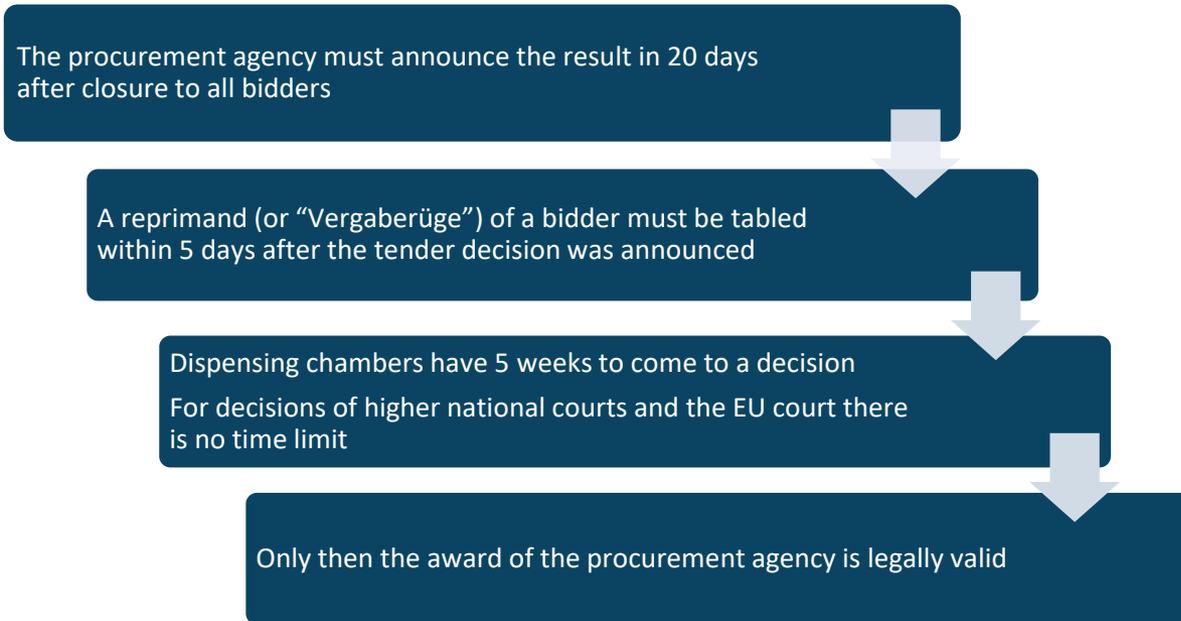
4. Reviewing tender decision

Rules and regulations for tender reviews:

- **Every participating company can request a review** of tender decision after its announcement for **above-threshold tenders** (reprimand or “Vergaberüge”) according to European law; for this, the federal level and the states must provide for independent dispensing chambers/appeal bodies (three on federal level)
- A decision of the respective dispensing chamber must be decided on within 5 weeks after request and results in a revaluation of the specifications and assessments or in a repetition of the whole tender. If the chamber decides negatively on the reprimand, the bidder can go to the higher court and finally to the European court
- **Principle:** To request a review is possible **without a fee**
- No financial penalty in case of unjustified review requests or lawsuits, but the bidder must pay for part of legal costs (between 2 500 € and 50 000 € excluding lawyer costs), if the request was unjustified, and for his own lawyers

4. Reviewing tender decision

Timeline for tender reviews



- In Germany there are approx. 900 review requests per year, 120 on federal level; success rate of approx. 50 %
- **Reviews** of tender decision for **below-threshold tenders** regulated by national law

5. Conclusion

- Due to the history and the structure of the federal state there is **no central procurement** system in Germany
- The federal, the state and the local government levels are responsible for their own procurement processes
- Each government agency on **federal level** is free to choose its e-procurement platform but there is a strong **tendency for a central state sponsored platform**
- The regulatory framework is set by European and national law concerning procedures, thresholds and the technical standards for e-procurement platforms
- There are no fees for the participation in or the review of government tenders
- The financial, technical and personnel related capacity of bidders is evaluated by a range of indicators
- The decision on reprimands on the procurement results is due within five weeks

About the German Economic Team



Financed by the Federal Ministry for Economic Affairs and Energy, the German Economic Team (GET) advises the governments of Moldova, Georgia, Ukraine, Belarus, Kosovo, Armenia and Uzbekistan on economic policy matters. Berlin Economics has been commissioned with the implementation of the consultancy.

CONTACT

Emily Haentschel, Project Manager Armenia
haentschel@berlin-economics.com

German Economic Team
c/o BE Berlin Economics GmbH
Schillerstraße 59
10627 Berlin

Tel: +49 30 / 20 61 34 64 0
info@german-economic-team.com
www.german-economic-team.com

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