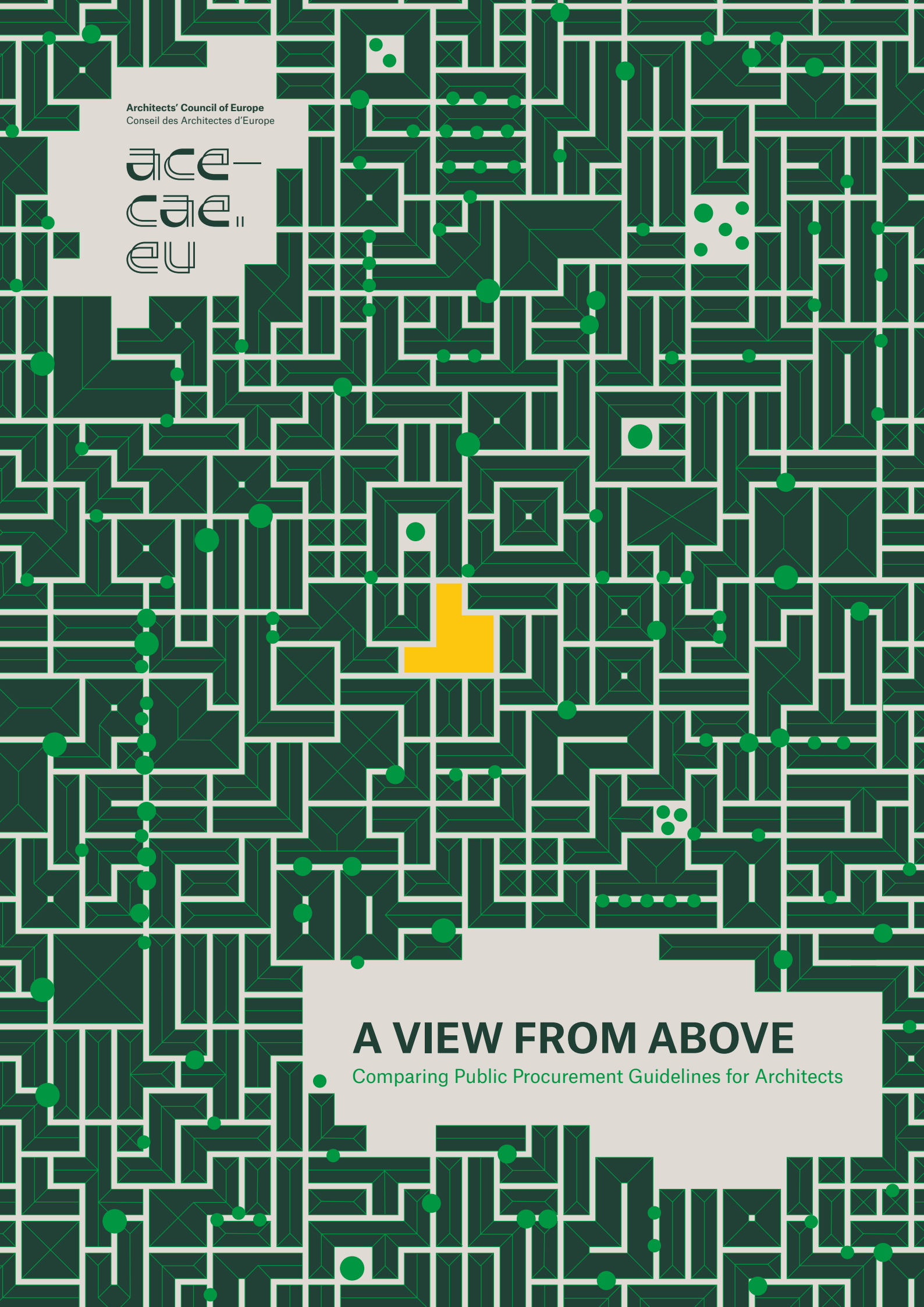




Architects' Council of Europe
Conseil des Architectes d'Europe



A VIEW FROM ABOVE

Comparing Public Procurement Guidelines for Architects



¹ https://ec.europa.eu/regional_policy/en/information/publications/guidelines/2018/public-procurement-guidance-for-practitioners-2018.

Summary of the Most Valuable Information from Different Examples of National Public Procurement Guidelines

In February 2018, the European Commission published a public procurement guidance for practitioners across all industries.¹ The aim of this guidance is to help procurement practitioners with the implementation of the Directive 2014/24/EU. Since it was not specifically made for the procurement of architects, it was proposed to write such a document specifically for them. Different Member Organisations of the Architects' Council of Europe (from Denmark, France, Germany, Latvia and Sweden) have developed or published their own guidelines for planners and local authorities. It should be noted, however, that the Swedish guidelines are still in draft form and have not yet been published in final form.

For the following document, a comparison of those handbooks was undertaken to extract valuable information for other Member Organisations, as well as inspiration for those countries that might want to revise their own guide. At the end of the document the full version of each of the guidelines can be found as well, if further information is needed.

The seven identified core elements for such a guideline were recognized as such by at least two guides, which is why they were classified as particularly important. The guidances' specific recommendations on procedures were left out since they are too different in the different Member States to draw general conclusions out of. For a more general overview on procedures, we recommend our document on open versus restricted procedures.

The guidelines examined differ from country to country. The Danish guide is only a brief two-page document containing the most relevant information for developers and advisors, while the German guide contains 93 pages with a long list of best practice examples at the end of the booklet.

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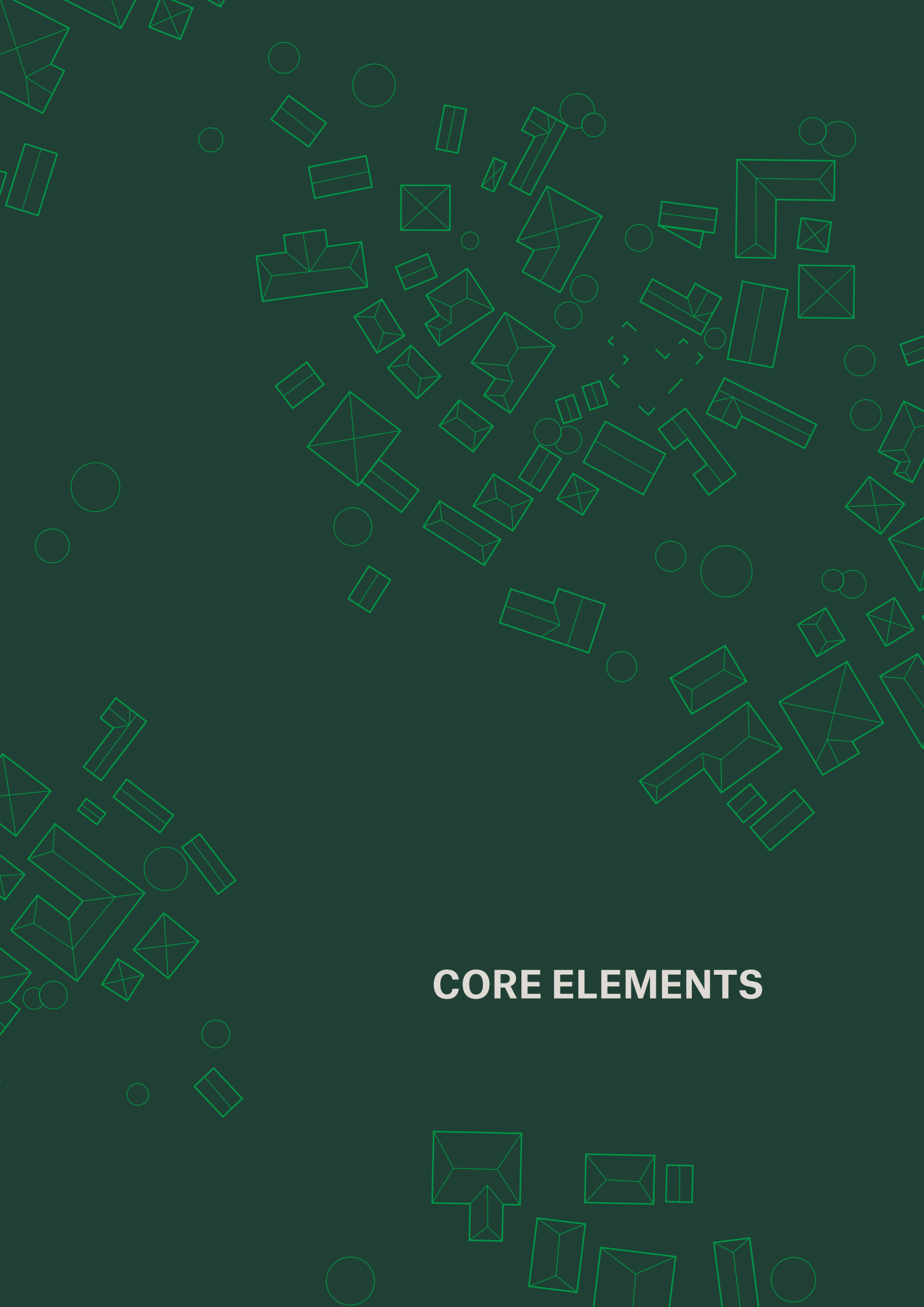


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Contents

Introduction	2
Core Elements	4
Danish Guidelines	12
French Guidelines	18
Latvian Guidelines	41
Swedish Guidelines	66
German Guidelines	104





CORE ELEMENTS

Seven different topics were identified that appeared in two or more guidelines:

1. Introduction to the basic principles of public procurement
2. Quality of architecture
3. Simplification
4. Statistical background information
5. Preparation of the procedure
6. Value calculation
7. First steps

² Guidelines for Public Procurement, page 73 ff.

Best practice examples are a common way of illustrating a desired outcome of a public procurement procedure. However, only the German guide² included such examples in its guide.

Sports Hall Revnice, Czechia
Architects: Grido architects
Photo: Alex Shoots Buildings

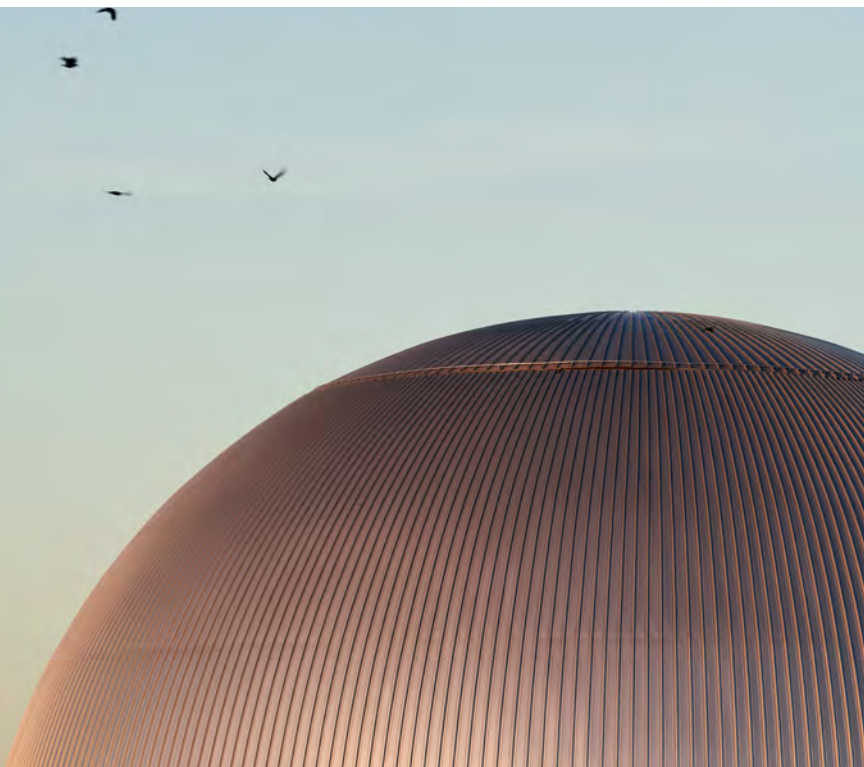


³ Guidelines for Public Procurement, page 16/17.

⁴ Latvian Union of Architects Recommendations for the Most Economically Advantageous Tender Evaluation Criteria in Architecture and Building Design Procurement, page 4.

1. Introduction to the basic principles of public procurement

In this chapter it is important to explain how the basic principles of public procurement are implemented. On top of the general basic principles of public procurement (non-discrimination, equal treatment, transparency, proportionality and mutual recognition) Germany³ and France have included additional criteria such as the obligation for the public client to carry out a detailed construction programme or consideration of the interests of small and medium enterprises (SME). The German guide recommends dividing services into lots, according to their type or speciality, in order to consider the interests of SMEs. The Latvian guide⁴ points out that there are also strategic objectives such as sustainability, social responsibility or innovation to be followed.



Airship Hall Mülheim an der Ruhr, Germany
Architects: Smyk Fischer Architects
Photos: Annika Feuss

2. Quality of architecture

The Swedish, French and Latvian guides give recommendations on how to achieve good quality architecture. The Swedish guide⁵ clarifies that sustainability, and quality should not be subject to short-term economic considerations and that knowledge of architecture, form and design should be developed and disseminated. It is further recommended that aesthetic, artistic and cultural-historical values are taken advantage of and developed, as well as local and international cooperation and collaboration. The French guide⁶ points out that the professionalism of the project manager, the choice of the architect and their team, and the means granted to them are crucial for the quality of the architectural production. Project management teams must be selected based on criteria that give priority to skills and the quality of references. Choosing teams mainly based on the amount of fees or short deadlines is the opposite of a quality approach, and may prove harmful to the community, the sound management of public funds and the success of the operation. Additionally, the Latvian guide⁷ states that in complex design situations only a certified architect can be a competent construction project manager based on their education.

⁵ Architecture for society - On public procurement of architectural services, page 6.

⁶ Mini-guide to choosing the right architect and team, page 1.

⁷ Latvian Union of Architects Recommendations for the Most Economically Advantageous Tender Evaluation Criteria in Architecture and Building Design Procurement, page 7.

3. Simplification

To simplify the process as much as possible the German guide⁸ recommends using simple and ascertainable suitability criteria and reducing the verification and testing effort for negotiated procedures with upstream planning competition. The guide also recommends using the European Single Procurement Document (ESPD) as a preliminary proof of suitability. The Danish guide gives a simple list⁹: documentation requirements should be minimised in the pre-qualification phase, so that only the winning bidder is required to provide documentation (also in relation to filling out the ESPD); the focus is solely on the tasks and documentation requirements necessary for the project; standard requirements should be kept separate from project-specific requirements; as far as possible, contract terms should follow the agreed construction document (ABR18) so that the client does not spend unnecessary resources on drafting individual contract terms and tenderers do not spend resources on assessing the consequences of any deviations.

⁸ Guidelines for Public Procurement, page 28/29.

⁹ Lower Transaction Costs and More Value in Procurement Processes - Common Recommendations, page 2.



¹⁰ Mini-guide to choosing the right architect and team, page 2.

¹¹ Architecture for society - On public procurement of architectural services, page 8.

¹² Guidelines for Public Procurement, page 11.

¹³ Architecture for society - On public procurement of architectural services, page 10.

¹⁴ Mini-guide to choosing the right architect and team, page 3.

4. Statistical background information

The French guide¹⁰ reminds us that the project management contract accounts for only 10% of the investment and 2% of the overall cost of a project. The guide also stresses that the overall cost will dramatically vary depending on the quality of the project management, the optimisation of the construction solutions and technical choices, and the intelligence invested in the initial design. Choosing a competent team and giving it sufficient time and resources will ensure real control over the investments and operating costs. The Swedish guide¹¹ gives an overview of the different kinds of procurement. In Sweden a little over half of all architectural procurements are about framework agreements, while a little over half of all procurements involve assignments with a value of more than 2 million SEK (above the threshold for EU procedures). A majority of all procurements of architects in recent years have been made through open procedures in Sweden.

5. Preparation of the procedure

The German guide¹² states that good planning prevents undesirable developments and ensures the long-term success of the planning and construction project. Good planning begins with sound project preparation, actively involves citizens in the preparation and planning process and relies on award procedures that select the projects to be commissioned based on quality criteria. The Swedish guide¹³ agrees on this and stresses that no matter what form of procurement you choose, the preparation is always important. As already mentioned in the chapter on quality, the Swedish guide points out the importance of cooperation between those who will use the services and those who manage the procurement procedure. It also puts the focus on the importance of the balance between formalities and creating interest and confidence among prospective bidders for a really good procurement.

The French guide¹⁴ also agrees on the importance of preparation and states that it is an essential phase. From the French point of view, it is important that before launching any consultation, the project owner determines precisely, the nature and extent of the needs to be met, taking into account the sustainable development

objectives in their economic, social and environmental dimensions. Drawing up the programme requires investigations (observations, data collection, diagnosis, surveys, etc.) and forward thinking to clarify the objectives of the planned operation and the means required to achieve them. A French programme includes at least :

¹⁵ Lower Transaction Costs and More Value in Procurement Processes - Common Recommendations, page 2.

- **the data and constraints of the site, existing buildings, regulations, easements, etc.,**
- **the cultural, social, urban planning, aesthetic, technical and environmental expectations,**
- **quantified requirements (inventory and typology of spaces, equipment, performance, etc.),**
- **requirements relating to functionality (hierarchical relations and links, ergonomics, etc.) and comfort (hygiene, atmosphere, air, light, noise, etc.).**
- **requirements in terms of the timeframe and phasing of the operation, investment costs, operating and maintenance costs (or even deconstruction costs), etc.**
- **the proportion of the budget allocated to the building works.**

This first stage will also make it possible to establish an estimation of the amount of the future project management contract, which will guide the project owner in choosing the procedure for procuring this contract.

The Danish guide¹⁵ stresses the importance of clarifying the basis from the side of the developer. To achieve this there is a clear, short list:

- **as part of the preparations for the tender, the client considers the prerequisites for ensuring that the project can be realised—in particular, budget assumptions.**
- **decide whether price, time or quality is most important, so that is clear to bidders – the design of the evaluation model is important.**

¹⁶ Lower Transaction Costs and More Value in Procurement Processes - Common Recommendations, page 2.

- **The project needs to be clarified with the backers, and it must be decided which aspects will be included in the tender and which aspects will be clarified with the winning consultant afterwards.**
- **Early market dialogue can be used to make the offer more targeted and precise**

The Danish guide¹⁶ also addresses the importance of the communicating the developer's vision.

¹⁷ Mini-guide to choosing the right architect and team, page 4.

¹⁸ Guidelines for Public Procurement, page 18.

6. Value calculation

The French guide¹⁷ gives information on the calculation of the project. It stresses that the amounts of all the tasks required to carry out the operation must be taken into account. It clarifies that the estimation also includes the amount of any options and bonuses provided for the candidates. The German guide¹⁸ gives an overview of all the costs that need to be included:

- **estimated total fee for the planning service to be awarded (including the previous and subsequent contracts, such as feasibility study, commissioning of construction supervision, etc.).**
- **ancillary costs, which are defined in more detail in Section 14 HOAI (2021) (e.g. shipping costs, certain travel costs)**
- **any options (e.g. phased commissioning or special services)**
- **in the case of planning competitions, also: bonuses or payments to participants (prize money, processing fee etc.)**

7. First steps

As first steps in the process the Swedish guide¹⁹ recommends conducting an early dialogue with suppliers and other experts or industry representatives to understand what the consultants can offer and what is reasonable to ask for in the procurement. The Danish guide²⁰ is again giving a specific list of recommendations to the developer for the first steps:

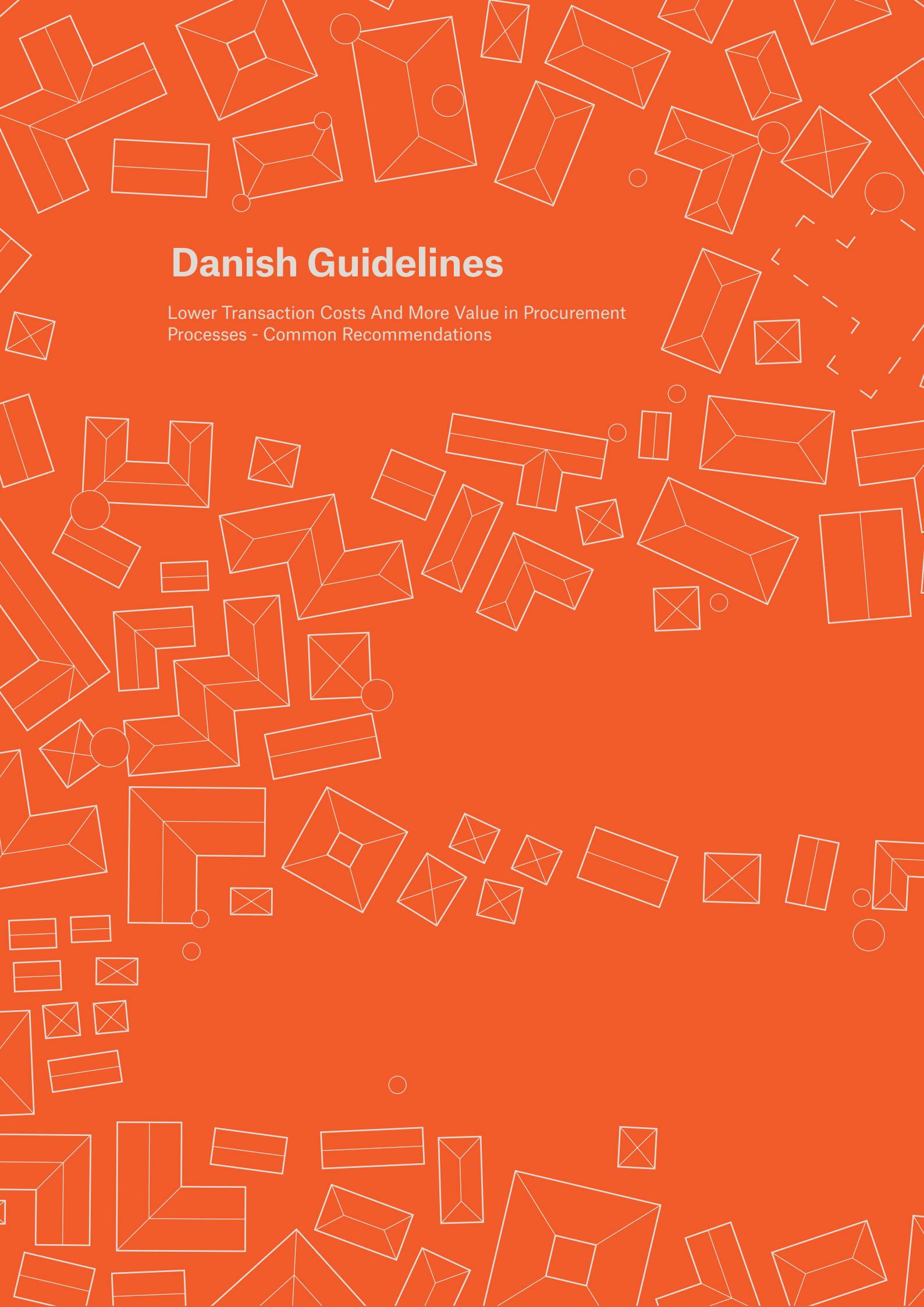
- **It makes sense to use dialogue in the procurement process but it needs to be scaled so that it doesn't become too resource-intensive which also results in serious bidders. Limit the number of participants as soon as possible in the process i.e. fewer pre-qualified bidders that might otherwise be the case.**
- **Create a summary or reading guide for the tender documents of they are substantial in size so that bidders can easily orientate themselves to the essentials.**
- **With framework agreements, the client should stick to the original tender. It is expensive if the mini tenders are too detailed and there are a lot of changes to the contract.**

¹⁹ Architecture for society - On public procurement of architectural services, page 10.

²⁰ Lower Transaction Costs and More Value in Procurement Processes - Common Recommendations, page 2.

Revitalization of the Railway
(Feroviarilor) Park, Cluj
Napoc, Romania
Architects: Vlad Sebastian
Rusu and Octav Silviu Olanescu
Photo: Cosmin Dragomir



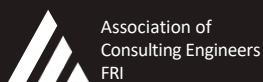


Danish Guidelines

Lower Transaction Costs And More Value in Procurement Processes - Common Recommendations

LOWER TRANSACTION COSTS AND MORE VALUE IN PROCUREMENT PROCESSES

COMMON RECOMMENDATIONS



MORE VALUE AND LESS TRANSACTION COSTS

Over the past year, a select group of industry practitioners have discussed a number of hypotheses about waste and value in procurement processes, with a particular focus on the procurement of consultancy services. In this process, members of the Danish Association of Clients, the Danish Architects' Association, the Danish Construction Association, the Danish Association of Architectural Firms and the Danish Association of Consulting Engineers have generated knowledge that has subsequently been processed and condensed into a set of common recommendations.

The recommendations reflect a consensus among the participating industry organizations on how to ensure good practice in procurement processes in the future. The hope is that the joint recommendations can give rise to reflection and action by both clients and tenderers, which can help to reduce waste and create more value in procurement processes. In this context, the focus is not only on project competitions, but on all tenders that include consultancy services.

Reducing transaction costs won't happen with these recommendations alone. However, they can be seen as a first step towards a joint effort to ensure better conditions and business for the parties involved in the construction industry. There may be a need to support the recommendations with tool development, good examples, etc. The organizations will work to promote this individually and in collaboration - including by bringing proposals for this into the forums that already exist in the area.

We hope you find inspiration and food for thought in what follows. Happy reading!

RECOMMENDATIONS FOR CLIENTS

THE DEVELOPER SHOULD CLARIFY THE BASIS

- As part of the preparations for the tender, the client considers the prerequisites to ensure that the project can be realized - especially budget assumptions.
- Decide whether price, time or quality is most important, so that it is clear to the bidders - the design of the evaluation model is important.
- The project needs to be clarified with the backers, and it is decided which aspects will be included in the tender and which will be clarified with the winning consultant afterwards.
- Early market dialogue can be used to make the offer more targeted and precise

THE DEVELOPER SHOULD COMMUNICATE THE VISION

- Success criteria and requirements for value creation should be clearly stated in the tender documents to create a common picture of quality and value, making it easier for consultants to submit good offers.
- Consider what creates value for the specific project - is it well-defined deliverables or collaboration and dialog about the task that you want?
- The project's organization and decision-making processes are made visible to bidders.
- The vision should be reflected in the evaluation model and criteria for the avoidance of doubt, and a thorough evaluation should be conducted and reported back to the bidders.

THE DEVELOPER SHOULD LIMIT THE REQUIREMENTS

- Documentation requirements should be minimized in the pre-qualification, as much (but not everything) can wait, so only the winning bidder needs to provide the documentation (also in relation to filling out the ESPD).
- The focus is solely on the tasks and documentation requirements necessary for the project - including what is best before, during or after the tendering process.
- Standard requirements should be kept separate from project-specific requirements so that consultants can more quickly decipher the essential aspects of the tender.
- As far as possible, contract terms should follow the construction agreed document (ABR18) so that the client does not spend unnecessary resources on drafting individual contract terms and tenderers do not spend resources on assessing the consequences of the deviations

THE DEVELOPER SHOULD CLARIFY THE SCOPE

- It makes sense to use dialog in the procurement process, but it needs to be scaled so that it doesn't become too resource-intensive - which also results in serious bidders. Limit the number of participants as soon as possible in the process, i.e. fewer pre-qualified and bidders than otherwise.
- Create a summary or reading guide for the tender documents if they are substantial in size so that bidders can easily orient themselves to the essentials.
- With framework agreements, the client should stick to the original tender. It's expensive if the mini-tenders are too detailed and there are a lot of changes to the contract.

RECOMMENDATIONS FOR ADVISORS

THE ADVISOR SHOULD NAVIGATE A BIDDING STRATEGY

- Efforts should be focused - and it takes strategy, self-awareness and discipline for a consultancy to only bid on the types of jobs where there is a real opportunity to win.
- There is a need for a business strategy for preparing tenders - including deliberately avoiding overperforming by investing more in the response than the client has requested.
- Consistently avoid bidding on jobs where price and requirements don't match.

THE CONSULTANT SHOULD UNDERSTAND THE CLIENT AS A CUSTOMER

- It is necessary to understand the client's organization to be able to put your own skills to best use and offer the right services and solutions. This creates trust and confidence in the assignment for both consultant and client.
- It takes a thorough reading of the tender documents to understand and be realistic about the client's visions and wishes.
- Take the opportunity to ask questions to the tender documents if there is any doubt. This will clear up many misunderstandings and help clarify any requirements that may be unclear.
- Ask for an evaluation of the tender process to get feedback yourself and to make the client aware of how the process can be improved in the future.

THE ADVISOR SHOULD FOCUS THEIR EFFORTS

- The consultant should be clear about what matters to the client.
- Participate in early market dialogue - this should be seen as an opportunity to learn more about the individual client's wishes as well as market developments in general.
- Set a framework for how detailed the offer is prepared. Focus on the award criteria so that the level of detail of the solution does not determine the quality of the offer.
- Before pre-qualification, clarify whether the necessary competencies for the task are available in the company.

THE ADVISOR SHOULD PRIORITIZE IN THE OFFER

- The consultant must be aware of prioritizing factors such as budget, buildability and organization when requested in the tender.
- The offer must be realistic, based on a qualified assessment of the client's budget and schedule.

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Recommendations are supported by Realdania

Photo: Counterframe



Architectural quality never happens by chance. It is the result of a combination of will and talent: the will of a client who knows how to assert his architectural demands, and the talent of a designer who knows how to make the most of his talent.

a project management team capable of responding to the building order entrusted to it.

Public procurement : awarding the project management contract, an essential responsibility for the public contracting authority

The project owner is the legal entity for whom the work is built. As the person principally responsible for the work, it fulfills a function of general interest, from which it cannot withdraw (article L. 2411-1 of the French Public Procurement Code).

Architecture is not a manufactured product: architectural creation and the quality of construction have been declared to be of public interest by the law on architecture, because they have an impact on everyone's living environment.

Only architects who are professionally trained and qualified, duly insured and registered with the Ordre des Architectes are authorized to draw up architectural projects.

The quality of architectural production and user satisfaction are directly linked to the professionalism of the client, the choice of architect and team, and the resources allocated to them.

However, project owners are confronted with the complexity of the texts governing the awarding of public contracts (the French Architecture Act of January 3, 1977, the French Public Procurement Code (Code de la commande publique), in particular Book IV of its second part dealing with provisions specific to public contracts relating to public contracting and private project management, the French Intellectual Property Code, etc.), as well as the habits adopted for the awarding of works and supply contracts.

The role of the project manager is to provide the best architectural, technical and economic response to the needs expressed by the client. More than just a service provider, the project manager is a true partner to the client, able to provide expertise and advice throughout the project. Project management teams must be selected on the basis of criteria that give priority to skills and the quality of references. Choosing teams primarily on the basis of fees or short deadlines is the opposite of a quality approach, and can be detrimental to the community, the sound management of public funds and the success of the project.

A social issue

The living environment and the built and landscaped environment are fundamental issues. When a client awards a contract to a project manager, he's not just buying intellectual services; he's ultimately commissioning a building that must be of high quality, efficient and economical, and that will be used for generations to come, shaping the environment and landscape and generating heritage value. The customer chooses a designer of workplaces and care facilities, a creator of living and living spaces for many years of use, and a partner who is at his side throughout the entire building design and construction process.

A crucial choice

The choice of architect and team is therefore essential, as the sums invested by the local authority to bring a project to fruition are out of all proportion to the cost of the project management contract, which represents only 10% of the investment and 2% of the overall cost of the project over the lifetime of the facility. This overall cost will vary enormously depending on the intelligence invested in the initial design, the quality of the dialogue between the client and the project manager, and the optimization of construction solutions and technical choices.

Choosing a competent team and giving it sufficient time and resources will ensure real control of investment and operating costs.

Supporting the emergence of the project: right from the start of the project, the public owner can seek advice from the CAUE in his or her department. Using a cross-disciplinary, multidisciplinary and participatory approach, the CAUE will advise on the definition of the project upstream of the programming and design stages. The project owner can also ask the CAUE for support throughout the project's development.

1. Programming, an essential first step for the creation of a quality facility

This is an essential phase, the responsibility of the public contracting authority, the content of which will enable us to measure the contracting authority's ambitions as much as it will condition and frame the project design work. Article L. 2111-1 of the CCP requires the project owner to determine precisely, before launching any consultation, the nature and scope of the needs to be met, taking into account sustainable development objectives in their economic, social and environmental dimensions. Article L. 2421-1 of the French Public Procurement Code goes further, specifying that it is the responsibility of the contracting authority, after ascertaining the feasibility and appropriateness of the planned operation, to determine its location, define the program, set the provisional financial envelope and ensure its financing.

Drawing up a program requires investigative work (findings, data collection, diagnosis, surveys, etc.) and forward thinking to clarify the objectives of the planned operation and the means required to achieve them. It is generally in the owner's interest to call on the services of a specialized service provider, known as a "programmer".

A program must include at least :

- Site data and constraints, existing conditions, regulations, easements, etc.
- Cultural, social, urban planning, aesthetic, technical and environmental expectations.
- Quantified needs (inventory and typology of spaces, equipment, performance, etc.).
- Requirements in terms of functionality (hierarchical relationships and links, ergonomics, etc.) and comfort (hygiene, atmosphere, air, light, noise, etc.).
- Requirements concerning operation deadlines and phasing, investment costs, operating and maintenance expenses (including deconstruction), etc.
- The proportion of the financial envelope allocated to the work.

This first stage will also make it possible to establish an estimate of the value of the future project management contract, which will guide the project owner in choosing the procedure for awarding the contract.

Tip: Be careful not to minimize the estimated cost of the operation during this programming phase, as this could jeopardize its feasibility, and result in a loss of competitiveness.
incurred non-refundable expenses.

2. The choice of procedure depends on the award thresholds

Procurement procedures differ according to the value of the contract. It is therefore essential to estimate the value of the contract in order to compare it with the European thresholds that require a competition or formalized procedure.

Calculation method

In the case of project management, the cost of all the tasks required to complete the project must be taken into account in order to determine the procedure to be followed, including the cost of additional tasks, even if they are entrusted by separate contract to other service providers (e.g., diagnostic studies or site scheduling, management and coordination). The estimate also includes the amount of any options and bonuses provided for candidates (article R. 2121-1 of the CCP).

Pursuant to article R. 2432-6 of the CCP, the prime contractor's lump-sum remuneration takes into account :

1. The scope of the assignment, particularly in terms of the number and volume of services provided
2. The degree of complexity of this mission, assessed in particular with regard to the type and technical nature of the work, its integration into the environment, and the requirements and constraints of the program;
3. The provisional cost of the work, based either on the provisional estimate of the work drawn up by the project manager during the preliminary design studies, or on the provisional estimate of the work drawn up during the final design studies.

Presentation of thresholds

For the French State and its public establishments (except industrial and commercial public establishments - EPIC)

Fees	> €40,000 EXCL.	> €139,000 EXCL.
	Adapted procedure (or formalized procedure)	Competition or mandatory formalized procedure

For local authorities, groups of local authorities and their public establishments, private low-income housing organizations, public health establishments and State EPICs (public industrial and commercial establishments)

Fees	> €40,000 EXCL.	> €214,000 EXCL.
	Adapted procedure (or formalized procedure)	Competition or mandatory formalized procedure

Tip: If the estimated value of the contract is close to the threshold, it is advisable to organize a competition or use a formalized procedure to avoid having to start all over again in the event of unforeseen circumstances.

Special case of contracts worth less than €40,000 excluding VAT

These contracts may be awarded without prior advertising or competitive bidding, in compliance with the law on architecture and the specific provisions applicable to public contracting (obligation to define a program and determine the financial envelope).

The project owner must not systematically contract with the same service provider(s), and must ensure transparency and traceability in the consultation process for these contracts, which are not immune to litigation.

3. Above thresholds, compulsory competition

Competitive bidding is a purchasing technique that enables the public purchaser to select a plan or project after a competitive bidding process and the opinion of a jury (article L. 2125-1 of the CCP).

The project management competition must be restricted, anonymous and paid at 80% of the estimated cost of the studies to be carried out (articles R. 2172-2 et seq. of the CCP and articles R. 2162-15 to R. 2162-21 of the CCP).

When to organize a contest?

- ▶ In accordance with article R. 2172-2 of the CCP, competitive bidding is mandatory for all project management contracts worth more than €139,000 excluding VAT (State and its public establishments, except EPICs) and €214,000 excluding VAT (local authorities, their groupings and most of their public establishments).
- ▶ The project owner is not required to organize a competition in the following 5 cases:
 - Reuse or rehabilitation of existing structures or urban or landscaping projects,
 - Works produced for research, testing or experimentation purposes,
 - Contract without design mission,
 - Infrastructure works,
 - Buildings constructed by social landlords, SEMs for their approved activity and CROUS.
- ▶ However, it is advisable to organize a competition as soon as the project presents a significant architectural, technical, urban or landscaping challenge, regardless of the contract value.

The advantages of a competition for a project owner are manifold:

- It creates an emulation that encourages innovation and adds value to the project.
- It ensures the transparency and credibility of the selection process for the project and the project management team.
- A competent panel of judges assists the project owner in making the right choices, a further guarantee of the project's success.
- The project is not set in stone at the end of the competition. It will be enriched in subsequent design phases by the jury's observations and by dialogue with the client and future users.

In these 5 cases, if he does not organize a competition, the project owner must use one of the formalized procedures defined in articles L. 2324-2, L. 2324-3

6 or L. 2324-4 of the CCP (see chapter IV below).

General principles of competition organization

A 3-step process

The competition itself takes place in 2 successive stages, followed by a negotiated procedure without publicity or competitive bidding to select the winner.

1. The project owner selects the candidates after receiving a reasoned opinion from the jury.
2. The jury ranks the anonymous projects and the owner selects the winner.
3. The third stage in the process consists of negotiating and signing the public works contract with the winner.

Jury intervention

The project owner must appoint a jury made up of people who are independent of the competition participants

at least one-third of whom are professionals with the qualifications required of candidates.

The MIQCP may also, at the request of the client, appoint one of its consultant architects to sit on the jury.

Participant compensation

Participants who have submitted work in compliance with the competition rules receive a bonus, as proposed by the jury. The amount of the bonus is set at a *minimum of 80%* of the estimated price of the studies requested from the participants (generally at the sketch or preliminary design level).



Center sportif intercommunal, Sélestat, Michel Girold architecte © architect

Competition procedure

1. A competition notice, conforming to the European model, is published in the OJEU and BOAMP (if the estimated value of the contract exceeds the thresholds).

This notice must contain the following information:

- It expressly states that the project owner intends to award a project management contract to the winner of the competition in application of article

R. 2122-6 of the CCP (service contracts awarded without prior advertising or competitive bidding).

- It sets a minimum number of candidates admitted to tender and, where applicable, a maximum number. The number of candidates selected must be sufficient to ensure effective competition (article R. 2162-16 of the CCP).

Tip: A minimum of 3 participants is sufficient to fulfill this obligation and encourage the emergence of different projects.

- It specifies the unweighted criteria for selecting applications and evaluating projects by the jury.

There is no need to specify award criteria, as the purchaser negotiates the contract with the winner after the jury has completed its work (article R. 2122-6 of the CCP).

- It specifies the level of services required from candidates admitted to tender (at least the sketch level, but not exceeding the level of a preliminary design) and the amount of the premium awarded to candidates.

2. The recommended deadline for receipt of applications is a minimum of 30 days from the date of publication of the notice of competition (this deadline is based on the one stipulated for public

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tendering procedures).
formalized).

3. The application file, drawn up on forms DC1 (letter of application and designation of representative) and DC2 (candidate's declaration) or a DUME, also includes the file of works. In order to make an appropriate selection and to better understand the specific nature of project management, the contracting authority indicates in the competition notice that references are not limited in time (by analogy with article 3 of appendix 9 of the CCP, which allows references more than 3 years old to be taken into account).
4. The project owner opens the application envelopes and records their contents.
Only bids received by the date and time specified in the competition notice can be opened (bids received after the deadline are eliminated - article R. 2143-2 of the CCP).
5. Before the jury examines the applications, the contracting authority may ask candidates whose files are incomplete to complete them within an appropriate timeframe that is the same for all (article R. 2144-2 of the CCP).
6. All applications received by the deadline are forwarded to the jury, which examines them, formulates a reasoned opinion and draws up minutes signed by all its members.
7. The contracting authority asks the candidates it intends to select following the jury's recommendation to submit, by a deadline set by the contracting authority, the documents justifying that they are not in a position to make a decision.

cases of disqualification (tax and social security certificates), article R. 2144-5 of the CCP.

8. If one of the candidates is unable to provide the requested supporting documents within the deadline, his application is declared inadmissible and the project owner completes his selection on the basis of the jury's opinion (and so on until the desired number of participants is available).
9. The project owner decides on the list of participants.
10. The contracting authority informs unsuccessful candidates that their application has been rejected, giving the reasons (articles R. 2181-1 and R. 2181-3 of the CCP).
11. The project owner sends the competition dossier to the participants simultaneously and in writing. This file includes at least the following information:
 - **General information** such as the reference of the published competition notice, the address to which the services must be sent, and the address of the buyer profile on which the consultation documents are made available to participants.
 - **Acceptance deadline.** The contracting authority must set a deadline for receipt, taking into account the complexity of the public contract and the time required for participants to complete the services required under the competition (article R. 2151-1 of the CCP).
Tip: The minimum deadline for submitting bids under the formalized procedure is 30 days from the date of dispatch of the invitation to tender. In the case of a competition, this deadline must be extended, as the work cannot be carried out before the deadline.

following a visit to the contract site. A deadline of 40 days is therefore the minimum. However, a longer period of between 2 and 3 months may be justified, depending on the level of service required and the complexity of the operation to be carried out.

- **Detailed list of services to be submitted anonymously.** The level of services to be provided (sketch or preliminary design) must be consistent with the premiums to be paid to participants in the competition. Care must also be taken to ensure the technical coherence of the services requested (for example, a dynamic thermal simulation makes no sense at the sketch level), and to avoid renderings that are too imprecise for the actual level of service required.
- **The criteria used by the jury to assess projects** (e.g. architectural, urban and landscape design, organizational efficiency and value for money, mastery and interpretation of program constraints and requirements, suitability of the project for the amount of work in the provisional budget, etc.).
Tip: The jury's evaluation criteria are not criteria for awarding a contract, and should not be weighted.
- **At this stage, participants are not being asked to submit a quotation for the project management contract.**

12. Before being passed on to the jury, the envelopes containing the entries are opened. The services requested are registered. If a distinctive element is present, the client will ensure that the service in question is made anonymous.

- 13.** It is recommended that a technical committee be set up to carry out a preliminary factual analysis of the projects. It does not take the place of the jury, does not pass judgment on the quality of the projects, and does not establish a ranking.
- 14.** The plans and projects are examined by the **jury**, which checks that they comply with the competition rules, evaluates them and proposes a ranking based on the criteria announced in the competition notice.
- He then draws up a performance review report, in which :
- It records the ranking of projects,
 - He gives his observations,
 - It mentions any points requiring clarification and the questions it intends to put to the candidates concerned,
 - It decides on the bonuses awarded to participants.
- The minutes are signed by all jury members.
- 15.** Anonymity is lifted.
- 16.** If the jury has recorded questions in the minutes, it can invite participants to answer them.
- No new performances are presented at the audition with the jury.
- A second set of minutes is drawn up and signed by all members. They give a full account of the dialogue.
- Tip:** This second set of minutes is intended to clarify specific points for the project owner and cannot lead to a new set of minutes.
- 17.** The jury's opinion and report(s) are forwarded to the client, who selects the winner of the competition.
- 18.** The contracting authority publishes **a notice of competition results** within a maximum of 30 days from the date of the contracting authority's decision (articles R. 2162-19 and R. 2183-1 of the CCP). It is published in the OJEU and BOAMP above the thresholds.
- 19.** In addition, the client invites the winning bidder to negotiate by asking him to submit his offer.
- 20.** It then negotiates the terms and conditions of the contract with the winning bidder and awards the contract.
- 21.** The contracting authority informs the other participants of the reasons for not declaring them winners, specifying the name of the successful bidder and the reasons for selecting his or her bid. It also specifies the date from which it is likely to sign the contract (which may not be less than 16 days or 11 days if the notification is made electronically, art. R. 2182-1 of the CCP).
- Tip:** This letter can also specify how the bonus is to be paid.
- 22.** The contract is notified and an award notice is published within 30 days of signature (article R. 2183-1 of the CCP).

4. Above the thresholds, other formalized procedures

Procedure with negotiation

The procedure with negotiation is the procedure by which a contracting authority negotiates the terms of a public contract with one or more economic operators authorized to take part in the negotiations (article L. 2124-3 of the CCP).

This procedure is used when a competition is not compulsory, and the project does not present a challenge that would lead the client to choose a particular project.

It favors negotiation, which is carried out in compliance with the principle of equal treatment of all bidders. The contracting authority therefore refrains from providing any information likely to give certain bidders an advantage over others.

This is a restricted procedure that works as follows:

1. Candidate selection

- This first phase consists of selecting a minimum of 3 candidates admitted to tender, after examination of their skills, references and resources (the minimum deadline for receipt of applications is 30 days from dispatch of the contract notice).
- The contracting authority will ask them to produce, within a set timeframe, documents proving that they are not prohibited from bidding (article R. 2144-5 of the CCP).

2. Invitation to negotiate sent in writing **to selected candidates**, requesting them to submit their bids (the minimum time for receipt of bids is 30 days from dispatch of the invitation letter, or reduced to 25 days if bids are submitted electronically (article R. 2161-15 of the CCP).

3. Exchange meeting with selected candidates

Prior to any negotiation, it is essential to hold a collective meeting to present and explain the client's expectations, answer any questions candidates may have about the program or the consultation rules, and clear up any grey areas.

It may be accompanied or preceded by a site visit, which must take place sufficiently in advance of the tender submission date.

4. **Submission of bids in the form of a draft project management contract and negotiation** The bid must not contain any services (neither plans, nor projects, nor explanatory or methodological notes including an initial response to the program).

The dialogue phase allows us to enter into the details of how the prime contractor/contractor tandem will operate in the future.

The negotiation concerns the conditions for carrying out the assignment, and must not constitute the start of design services, as this would be the start of contract performance before the contract is awarded.

Tip: During negotiations, the various elements specific to the operation can be addressed: contractual clauses (organization of the project management, study schedule, completion deadlines, price, tolerance rates, method of awarding works contracts, penalties, insurance, etc.), then the adequacy of the contractual terms and conditions.

the project manager's proposal with all these elements.

5. Conclusion of negotiations and choice of contractor

The contracting authority sets a common deadline for the submission of any revised bids. He awards the contract and informs the other bidders that their bids have been rejected, specifying the reasons and the name of the successful bidder.

It publishes an award notice within 30 days of signing the contract.

Competitive dialogue

Competitive dialogue is a procedure in which the purchaser engages in dialogue with the candidates admitted to take part in the procedure with a view to defining or developing one or more solutions to meet its needs, and on the basis of which the participants in the dialogue are invited to submit a bid (article L. 2124-4 of the CCP).

1. This procedure is not a competition. Created to more precisely determine a program and the content of a contract in the case of complex operations, it does not allow candidates to be asked for a plan or project. It does, however, make it possible to request services upstream of sketch studies (feasibility or diagnostic studies, for example), which give rise to the payment of a premium.

2. This complex and costly procedure requires a well-structured contracting authority, capable of guaranteeing that participants in the competitive dialogue respect their rights, in particular intellectual property rights. For this reason, it should be reserved for operations for which the client is objectively unable to define the technical resources required to meet its needs, or to establish the legal or financial structure of the project.

The call for tenders

Invitation to tender is the procedure by which the purchaser selects the most economically advantageous offer, without negotiation, on the basis of objective criteria previously made known to the candidates. It may be open or restricted (article L. 2124-2 of the CCP).

There is no negotiation, the bids are intangible, which obliges the project owner to define a set of specifications.

This is not the case for architectural design contracts.

For this reason, this procedure is inappropriate for project management contracts involving design services.



Médiathèque Albert Camus, Carnoux-en-Provence, Atelier Fernandez & Serres architectes © Jean-Michel Landecy

5. Below the thresholds, the adapted procedure without delivery of services or the competition for any operation presenting an architectural and urban challenge

Choosing the right procedure, and carrying it out correctly, guarantees the efficiency of the order and the proper use of public funds.

Below these thresholds, the contracting authority has the choice between using a formalized procedure or an adapted procedure, in compliance with the legal and regulatory framework and the principles of freedom of access to public procurement, transparency of procedures and equal treatment of candidates.

The choice of procedure depends on the stakes involved.

An operation with a high architectural profile will require the organization of a competition to choose between several projects, with the client having to comply with all the formalities (jury, anonymity, premium).

In all other cases, it is best to choose a procedure that encourages dialogue - an essential step towards effective collaboration and quality workmanship.

Tip: C h o o s i n g a procedure based on a call for tenders is a mistake with serious consequences for the quality of the project and the needs to be met. This type of procedure is widely used for supply and works contracts. However, choosing a designer on the basis of price, which generally takes precedence over consideration of skills and references, is not part of a quality approach. Contractualizing a project management contract with a long lead time requires dialogue, fine-tuning and negotiation.

Adapted procedure without delivery of services

This is a restricted procedure for selecting candidates on the basis of their skills, references and resources, and then negotiating with the candidate who submits the best offer.

14

This procedure is easy to organize, and does not require any initial response to the operation's program. It gives priority to dialogue, an essential stage in understanding the client's needs and fine-tuning the conditions of execution of the future contract.

Negotiation allows us to verify the team's professionalism and ability to listen before signing a contract. The relational dimension is important, as the client chooses a project management team with whom he will work for several years.

The contracting authority must first define selection criteria for the candidates, adapted to the nature, complexity and size of the project, such as: the quality of the architectural production, representative references of the team, its degree of experience, studies or research carried out, its human and material resources, the presence of specific skills in the team, etc. The contracting authority must then define the criteria for the selection of the candidates, adapted to the nature, complexity and size of the project.

Tip: These criteria should not be weighted. It's best to express them simply, without making excessive demands. There's no point in multiplying the demands for specific skills, which can, if necessary, be provided by subcontractors.

An initial shortlist of candidates is drawn up on the basis of a dossier of works presenting the experience and capabilities of the candidate teams.

The project owner then invites all selected candidates to submit a bid.

Tip: Before bids are submitted, the project owner can organize a meeting with the teams to explain the program, its expectations and the challenges of the project, and to answer any questions the candidates may have.

In drawing up their contractual offer, candidates should evaluate the resources and arrangements required to carry out the assignment, and the organization of their team, according to the specific features of the program. The offer does not include any graphic or descriptive elements concerning the future project.

Bids are analyzed and ranked.

The client then enters into negotiations with the bidder whose offer is ranked first, to discuss the content of the assignment and the contractual clauses.

If negotiations are successful, the contract is awarded.

If negotiation fails, the first-ranked bidder is informed that its bid has been rejected, and the project owner contacts the second-ranked bidder under the same conditions.

Adapted procedure

Step 1

Advertising

Prepare your consultation file and publish a contract notice

1. As required by article L. 2421-1 of the CCP, first define:
 - The precise program of the operation (stakes, functionalities, surface areas, organization charts, constraints, descriptions, etc.).
 - Estimated financial budget for the works (estimated on the basis of recent similar projects, ratios per m² or any other approach).

Tip: To do this, you can contact your CAUE or an outside consultant (AMO, Programmer, etc.).
2. Estimate the amount of the project manager's fees, which will enable you to check that the procedure to be used is an appropriate one (the estimate must be below the formal procedure threshold).
3. Publish a contract notice in a legal gazette or the BOAMP if the value of the project management contract exceeds €90,000 (excluding VAT), or in any other medium of your choice if the value is less than €90,000.

Content of the contract notice

- Provide essential information: purpose of the contract, content of the assignment, estimated cost of the work.
- Clearly state the procedure in the contract notice:

Adapted procedure to select 3 candidates invited to submit an offer, then to negotiate with the bidder submitting the best contractual and financial offer. If negotiations with this bidder are unsuccessful, negotiations will be held with the following bidders, in order of ranking.
- Specify the criteria for selecting candidates: skills, references and resources.

There is no provision in the French Public Procurement Code for weighting or ranking the criteria for selecting applications.

Tip: When selecting candidates, the use of "quantitative" criteria (number of references, sales figures, design deadlines, etc.) is not relevant and cannot take precedence over the main criterion of choice: quality in all its components, in particular that of the candidates' architectural and technical production.

- Specify the deadline for receipt of applications

Allow sufficient time for candidates to submit their applications, taking into account the complexity of the public contract and the time needed for economic operators to prepare their applications (article R. 2143-1 of the CCP).

Appropriate advertising, which sets too short a deadline for receipt of applications, could be considered insufficient in terms of the principles of transparency and equal treatment.

- Specify the number of candidates admitted to submit an offer Tip: **3 candidates is more than sufficient.**
- Specify the criteria for awarding the contract, which must include the price of the services and qualitative criteria such as the team's know-how, efficiency, experience and reliability.

Advice: With regard to the price criterion, it's worth remembering that the most decisive factor for the client is the cost of building and operating the project. Inadequate remuneration of the project manager, due to a lack of technical optimization, can only lead to a reduction in the overall final cost of the project. So as not to be tempted to rank the bids offering the lowest fees first, the client formulates the price criterion in terms of "the adequacy of the price with the complexity and scope of the work to be carried out".

Avoid introducing a criterion based on design time. With a project management contract, the contracting authority buys the time spent by competent professionals in designing, optimizing and controlling the construction of a public facility. Reducing this time is therefore detrimental to the quality of the building, and will result in higher construction and operating costs for the future facility. Negotiation will enable us to refine and contractualize the relevant deadlines.

- Place all tender documents, including the contract notice, on a buyer profile.

The buyer's profile is the contracting authority's online site for making consultation documents available to economic operators electronically, and for electronically receiving documents submitted by candidates and bidders.

4. Ask each candidate to submit a simplified application file, together with a portfolio of work consisting of a list of references, not limited in time, in A4 format, and a visual presentation in A3 format of the agency's significant works among its references.

Tip: Rather than asking for references identical to the subject of the contract, it is preferable to ask candidates to present operations of similar complexity or context (new or refurbishment, for example) demonstrating their ability to carry out the planned program. Download the simplified framework for presenting references: <http://www.architectes.org/documents-types-pour-la-commande-publique>

Step 2

Analysis of applications and selection of candidates

Screen applications to select a limited number

1. Receive applications and eliminate those received after the deadline.

2. Examine the references, skills and resources of each candidate.

Tip: It's a good idea to enlist the help of a specially appointed committee. Consider including architects in the committee, who can provide you with a professional perspective on the applications.

In the case of grouped applications, the assessment of professional, technical and financial capacities is global. It is not required that each member of the team has all the capacities required for the execution of the contract.

3. Select applications according to the criteria specified in the contract notice. Identifying the 3 best teams is usually sufficient.

Tip: A sensitive approach is always preferable to any weighting and/or ranking technique. Adding totally unrelated, heterogeneous values inevitably leads to an incoherent choice and an arbitrary result. Architectural quality is an unquantifiable concept, but it is crucial to the success of your project.



Center de loisirs Pablo Neruda, Chevilly-Larue, Sylviane Saget architecte © Jérôme Fleurier

Step 3

Analysis of bids and negotiation with the best bidder

1. Invite successful candidates to submit their bids and proof that they are not prohibited from bidding (article R. 2144-5 of the CCP) within a reasonable period of time. They must therefore send you their tax and social security certificates.
2. Analyze the bids and rank them according to the criteria set out in the tender documents. The contracting authority uses all available means to detect abnormally low bids. When a bid appears to be abnormally low, the contracting authority requires the economic operator to provide details and justification of the amount of its bid. If, after verification of the justifications provided by the economic operator, it establishes that the bid is abnormally low, it rejects it (article L. 2152-6 of the CCP).
3. Meet with the first-ranked bidder and negotiate the contract.
Negotiations will cover the various elements specific to the project: the constraints of the project and the program, the contractual clauses (organization of the contracting authority, study schedule, completion deadlines, price, tolerance rates, method of awarding works contracts, penalties, insurance, etc.), and then the appropriateness of the prime contractor's proposal in relation to all these elements.
4. If negotiations are successful, award the contract.
5. If negotiation fails, inform the bidder that its offer has been rejected and enter into negotiations with the second-ranked bidder.
You must be able to justify the reasons for rejecting the bid. In fact, you will be obliged to communicate them to the bidder if he asks you to do so in writing.
6. Inform other bidders of the rejection of their proposal.
Tip: Remember to publish a notice of award, which will make the procedure more secure, as this publication starts the contentious appeal period.
7. Notify the successful bidder of the contract.

The initial version of this guide was drawn up jointly by the Ordre des architectes, the Secrétariat général and the Direction générale des patrimoines of the Ministère de la culture et de la communication, the Mission interministérielle pour la qualité des constructions publiques and the Fédération nationale de conseils d'architecture, d'urbanisme et de l'environnement.

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Latvian Guidelines

Latvian Union of Architects Recommendations for the Most Economically Advantageous Tender Evaluation Criteria in Architecture and Building Design Procurement





**Latvijas
Arhitektu
savienība**

LATVIAN UNION OF ARCHITECTS RECOMMENDATIONS FOR THE MOST ECONOMICALLY ADVANTAGEOUS TENDER EVALUATION CRITERIA IN ARCHITECTURE AND BUILDING DESIGN PROCUREMENT.

In order to improve procurement in the field of architecture and building design and to create high quality and sustainable buildings in publicly funded projects in the long term, the Latvian Association of Architects has developed recommendations for the evaluation criteria of the most economically advantageous tender (MEIP) in architecture and building design procurement.

For many years, design tenders have been carried out on the basis of the lowest price, and in countless cases clients have not received designs that comply with good practice and legislation. In order to correctly apply the most economically advantageous evaluation criteria in design, it is necessary to look at the whole procurement procedure and its objectives.

The Guidelines are designed to address the risks of poor quality design and to eliminate the regular non-compliance found in the previous procurement framework: delays, inappropriate use of specialists, trading of signatures, non-compliance with building regulations and good design practice.

Cooperation partners in the evaluation of the guidelines: the State Real Estate Agency, the State Defence Military Facilities and Procurement Centre, the Riga Energy Agency.

Sources used: IT industry SIP guidelines, IUB advice and guidance material, industry surveys and interviews.

ABBREVIATIONS:

AMI - Architectural and artistic research

ARDV - Head of Architecture

AVK - Heating, ventilation, air conditioning systems

BIM - Building Information Modelling

BPV - construction project management

BREEAM - British Research Establishment Environmental Assessment Method

EU - European Union

LEED - Leadership in Energy and Environmental Design

LAS - Latvian Association of Architects

MK - Cabinet of Ministers

PPL - Public Procurement Law

PHPP - Passive House Planning Package, an energy efficiency calculation programme

SIP - the most economically advantageous offer

ABBREVIATIONS:	2
1. PREPARATION OF THE PROCUREMENT AND TECHNICAL SPECIFICATIONS	4
1.1. DEFINITION OF THE SUBJECT-MATTER AND PURPOSE OF THE PROCUREMENT	4
1.2. THE TECHNICAL SPECIFICATION. DESIGN INPUT	4
1.3. REQUIREMENTS FOR THE SUBJECT-MATTER OF THE PROCUREMENT	5
1.4. REQUIREMENTS FOR THE CONTRACT PERFORMANCE PROCESS	5
1.5. THE ELIMINATION OF RISKS TO THE ACHIEVEMENT OF THE OBJECTIVES OF THE PROCUREMENT	7
1.6 OVERVIEW OF BUILDING LEGISLATION: HOW TO BE A RESPONSIBLE LANDLORD	8
1.7. ANALYSIS OF PREVIOUS PROJECTS	9
2. CONSTRUCTION PROJECTS AND TYPES OF PROCUREMENT	9
2.1. DESIGN PHASES AND BUILDING LIFE CYCLE	9
2.2. CONSTRUCTION PROJECTS UP TO EUR 9999	10
2.3. CONSTRUCTION PROJECTS UP TO EUR 41 999	10
2.4. CONSTRUCTION PROJECTS BELOW THE EU CONTRACT PRICE THRESHOLD	11
2.5. CONSTRUCTION PROJECTS ABOVE THE EU CONTRACT PRICE THRESHOLD	11
3. EVALUATION OF THE MOST ECONOMICALLY ADVANTAGEOUS TENDER	12
3.1. NATURE OF THE PROCUREMENT, THE RANGE OF TENDERERS AND MARKET TESTING	12
3.2. QUALIFICATIONS OF TENDERERS	13
3.3. ECONOMIC VIABILITY CRITERIA	14
1.1 DESIGN AND SUPERVISION COSTS	15
2.1. EXPERIENCE OF THE LEADING CERTIFIED PROFESSIONALS	16
2.2. BIM COMPETENCE - ONLY IF BIM IS TO BE USED FOR THE DESIGN OF THE SITE	17
2.3. ADDITIONAL TRAINING FOR PROFESSIONALS	18
3.1. STAFF RESOURCES	19
3.2. PROJECT MANAGEMENT SYSTEM	20
3.3. DATA MANAGEMENT SYSTEM	21
4.1 EXPERIENCE OF WORKING TOGETHER AS A TEAM	22
5.1. ARCHITECTURAL SKETCHES AND CONCEPTS	23
LATVIAN UNION OF ARCHITECTS	24

1. PREPARATION OF THE PROCUREMENT AND TECHNICAL SPECIFICATIONS

1.1. DEFINITION OF THE SUBJECT-MATTER AND PURPOSE OF THE PROCUREMENT

The purpose of the PPL is to ensure openness of procurement, efficient use of the contracting authority's resources by minimising its risk, free competition between suppliers and equal and fair treatment of suppliers.

The Public Procurement Law also includes strategic objectives:

- Environmental quality and sustainability - reducing the construction eco-footprint, responsible conversion of existing buildings, recovery and re-use of materials, insulation and improving indoor climate;
- Social responsibility - using environmental accessibility and universal design solutions, providing a safe and healthy environment for employees;
- Innovation - incorporating innovative solutions into architectural designs, such as increased use of timber structures, combining and multi-functioning spaces at different times of the day, flexible workspaces, enhancing employee communication and productivity in improved workspaces.

The desired outcome of the PIL is an architectural design process that essentially comprises an architectural service, with the architect, as the construction project manager, fulfilling the statutory duties of construction project management. This implies the personal participation of the construction project manager and the lead architect in the design process, meetings and decision-making. This can be achieved by requiring the personal participation of the responsible professionals in the procurement and the contract and by specifying the control mechanisms to be implemented. Strict control mechanisms are more successful in deterring unscrupulous companies from bidding for tenders than penal sanctions.

1.2. THE TECHNICAL SPECIFICATION. DESIGN INPUT

Recommendation: when preparing the terms of reference and the technical specification for the procurement, provide and prepare the following basic data, depending on the subject-matter of the procurement and the needs of the client:

- a topographical plan or diagram at least to the extent required by the building regulations, with sufficient margin across the boundary of the site;
- a separate survey report for each internal and external utility network to be preserved, drawn up by a specialist in the field;
- technical regulations for engineering networks, if this is within the competence of the client;

In the case of alterations, in addition to the above documents, the following must be provided:

- cadastral survey file of existing buildings in .dwg format (if available upon request from the Land Service);
- Detailed technical surveys of existing buildings, focusing on the purpose of the conversion and indicating the risks to the building in question;
- All available documentation on previous alterations to existing buildings;
- survey of flues and chimneys (if applicable).

1.3. REQUIREMENTS FOR THE SUBJECT-MATTER OF THE PROCUREMENT

Recommendation - The contracting authority, when preparing the terms of reference and the technical specification, to include detailed information:

- the tender form must allow for the submission of a list of all the stages and parts of the project to be constructed;
- the project timeframe must be sufficient to allow for the development of appropriate architectural solutions options and discuss them with the client and the user of the premises;
- the planned specification of the premises must be agreed with the end user, taking into account their needs and experience;
- the planned space specification must provide space for reserve corridors, ancillary technical spaces and environmental for accessibility
- the estimated number of occupants of the premises must be included in the planned specification;
- when preparing the specification of the premises in the case of alterations to the building, the compliance of the existing building with the applicable the building regulations and the conformity of the cadastral survey file with the actual situation (if not included in technical survey)
- for finishes and utilities, the specification must meet the client's requirements and hygiene standards, be up-to-date and include the possibility to propose alternatives.

1.4. REQUIREMENTS FOR THE CONTRACT PERFORMANCE PROCESS

When preparing the terms of reference for the procurement process, the contracting authority should follow the following principles:

- Provision must be made for monitoring the performance of the contract according to the stages of the construction project;
- the procurement should define the arrangements for design meetings and decision-making, including the personal participation of certified the presence of specialists;
- provide for the submission of the design documentation in a format that can be used by the client for the operation of the building and for subsequent modifications;
- require the tenderer to ensure data security and backups throughout the design to exclude total or partial data loss;
- It is advisable to provide for the use of electronic signatures for mutual communication to avoid forged signatures and retrospective signing of documents;
- where BIM requirements are included in the procurement, the competence of the contracting authority to maintain and verify them should be specified; responsibility for BIM performance should be claimed from a certified professional.

When drafting a contract, the contracting authority should take into account the following recommendations:

- the client must monitor the performance of the contract from day one by requesting meetings, contacts and lists of contractors and regular communication;
- A rational payment schedule with 2-5 intermediate stages according to the stages of the construction project;
- the contract must provide for an advance payment;
- the contract must already provide for the possibility of termination after non-compliance with the first milestone.

1.5. THE ELIMINATION OF RISKS TO THE ACHIEVEMENT OF THE OBJECTIVES OF THE PROCUREMENT

The procurement must achieve its objectives.

If the purpose is architectural design, the performance must contain an architectural service in substance - the service is provided by a certified architect in person and also in person managing the work of other certified professionals in the development of the construction project.

If the objective is a complex design service, with an architectural part and an engineering part, the certified architect as construction project manager must fulfil the statutory obligations for construction project management.

The construction project manager and the certified architect must be personally involved in the design process and in the meetings, deliberations and decisions; delegation of construction project management to an assistant or project manager is not permitted.

The parts and content of a construction project are clearly defined in the construction regulation. The activities of certified architects and engineers are regulated area, these professionals are accountable for their work in accordance with the law. No other person who does not hold a certificate is entitled to take on the work and responsibilities of a certified professional.

How to achieve this?

Any redesign and renovation map shall affect the aesthetic appearance, function, environmental accessibility, evacuation, hygiene and other standards, and other parts of the project. It is the responsibility of the certified architect to assess which aspects of a particular project need to be considered and addressed.

The procurement and the contract must clearly define that the personal participation of certified experts will be required; specify the controls mechanisms, and they must be implemented. A strict control mechanism in place discourages intermediary companies from bidding for contracts, but penalties are already fighting the consequences.

Recommendation - In complex design situations (except civil engineering structures), always stipulate that only a certified architect can be a competent construction project manager on the basis of his/her education.

The Latvian Association of Architects recommends that the procurement documentation should contain the provisions of Article 42, second part, paragraph 9 of the PIL the reason for the exclusion of candidates and tenderers. The Contracting Authority shall have the right to verify whether the tenderer has committed any serious misconduct in its professional conduct such as to call into question its integrity. At the same time, the contracting authority must have regard to the procedure for applying the specific ground for exclusion set out in Article 42(8) of the TUE. The contracting authority thus minimises the risk of awarding the contract to a tenderer who is negligent in the performance of the contract, fails to comply with the laws, regulations and ethical standards applicable in the sector.

1.6 OVERVIEW OF BUILDING LEGISLATION: HOW TO BE A RESPONSIBLE LANDLORD

For existing buildings	Solution
Visual check - whether the plan of the premises in the cadastral survey file corresponds to the actual situation.	If it does not, then it has been illegally converted and the designer will have the additional task of complying with the regulations, as well as additional construction work.
Visual check - whether the main entrance, access to rooms and toilets within the design limits meet the requirements for environmental accessibility (LBN 200-21) - the main points can be read and understood without further education.	Define the task for the designer: to ensure environmental accessibility.
Visual inspection - whether the stairwells, escape exits are accessible, whether they have fire-resistant doors (marked EI30 or EI60); whether the safety of stair handrails complies with LBN 200-21.	Define the task for the designer: to develop a review of fire safety measures and the necessary solutions.
Checking the number of people - is it as defined in the design brief, does it exceed the current number?	To be defined in the design brief.
If you change the function of a room, won't other rooms - technical rooms, storage rooms, cloakrooms - also change. Is there a lunch area for staff, is there a cloakroom for everyone, etc?	Define in the design brief or specify that it should be addressed in the design.

Mitigating risks

For existing and new buildings	Solution
For an existing building - no actual renovation of the space and facade can be carried out without adjustments to the utilities; a full list of the parts of the construction project must be drawn up for the planned works for any building.	For example, electrical networks and lighting, lightning protection, heating, ventilation, water and sewerage, rainwater harvesting, low-voltage networks - fire alarms, telephone and computer networks, access control, video surveillance, etc.
The tender form must allow for the submission of a list of all the parts of the project to be constructed. Designers should not be allowed to improvise, as this risks not covering the full scope of the works and therefore making the tenders incomparable.	It is easier to justify adding or removing a part during the performance of a contract, when the rules are clear and the same for everyone. This can be consulted during the market study.
Expertise for a Group 3 building.	For a Group 3 building, there may be an expert examination of the normative scope or, preferably with an additional task, of the full scope, as well as an examination of the cross-compliance of the design components.
Expertise for a Group 2 building.	It is also recommended to carry out an expert assessment for a Group 2 building, e.g. for alterations, facade insulation.

1.7. ANALYSIS OF PREVIOUS PROJECTS

What improvements have been made to the technical specification?

1. Have you had to change the technical specification during the design process, what were the reasons? How to anticipate possible changes?
2. Are the users satisfied with the premises? Have any problems been identified that could have been remedied during design?
3. What feedback has there been on the operation of the building? Have any problems been identified that could have been remedied during design?

What improvements have been made during the process?

1. Have deadlines been monitored and meetings regularly convened? Are there any new requirements in the contract?
2. Have the stakeholders had enough time to look at the different project options (alternatives) and discuss their pros and cons?
3. Should an assessment of feasibility alternatives be included?

Recommendation - you can consult the architect and building inspector of the building authority about the problems of previous projects and listen to their recommendations for the next project.

2. CONSTRUCTION PROJECTS AND TYPES OF PROCUREMENT

Construction may be carried out in several phases, either as part of a single procurement or in successive procurements. Depending on the scope of the works included in the procurement and the planned scope of the works, the appropriate procurement procedure shall be applied. Looking at the procurement statistics, each type of procurement is characterised by a certain type of construction project.

2.1. DESIGN PHASES AND BUILDING LIFE CYCLE

The construction project and the life cycle of a building consist of the following phases:

- feasibility study, concept and meta;
- minimum construction design or sketch design;
- full construction project or technical design and detailed design;
- Author supervision;
- operation, modifications, alterations.

In a standard situation, it is preferable to tender for all design phases, ensuring a well-thought-out and coherent design of the building that is in line with the original intention. When procuring the conversion of a building, the original designer of the building should first be identified and interviewed (if possible). The designer can provide valuable information about the building, participate as a consultant or as a tenderer, or, in a certain form, waive claims and allow another architect to make changes to the building. See the Copyright Act for details.

2.2. CONSTRUCTION PROJECTS UP TO EUR 9999

1. alterations to groups of rooms and building elements:

- renovation or alteration of individual groups of premises;
- exhibition and museum spaces for specific purposes;
- landscaping and squares;
- ensuring environmental accessibility
- alterations to individual structures - part of an opening, slab or roof.

2. Energy efficiency and building envelope solutions:

- energy efficiency improvement projects in municipal housing
- renovation of individual elements - facades, windows, roofs, etc.

The non-application of the requirements of the PIL to tendering procedures does not exempt from compliance with building law and architectural quality requirements. The service provider must be registered in the Register of Construction Undertakings and must ensure that the certified specialists required for the performance of the subject-matter of the procurement are qualified as certified in the Register of Construction Undertakings.

2.3. CONSTRUCTION PROJECTS UP TO EUR 41 999

In this case, the procurement is carried out in accordance with Article 9 of the PIL.

1. Design and supervision of building alterations:

- cultural and educational institutions
- sports facilities and fields;
- groups of premises for health and social care facilities;
- Groups of state and local government premises;
- landscaping and seasonal structures;
- exhibition and museum space;
- dormitories, canteen groups
- environmental accessibility, lifts;
- changing the function of certain groups of rooms, interior design.

2. Energy efficiency, building envelope solutions and supervision:

- complex energy efficiency improvement projects - external walls, windows, roof, utilities;
- renovation of individual elements - facades, windows, roofs.

Recommendation:

- significantly expand the range of bidders in this price category by attracting more professional architectural practices to execute public contracts. For more information, visit the LAS website, section "Professional information".
- consider, through adequate market research, whether the procurement should be placed in the next price bracket;
- For EU projects, carry out detailed market and price studies as early as possible in the procurement preparation phase.

2.4. CONSTRUCTION PROJECTS BELOW THE EU CONTRACT PRICE THRESHOLD

1.Design and supervision of building alterations and new constructions:

- cultural, scientific and educational institutions
- sports facilities;
- health and social care buildings
- state and local government buildings
- Energy efficiency solutions through a combined procurement for several buildings.

2. Feasibility studies and sketch designs:

- Developing functional plans for large existing buildings;
- sketch designs to be further implemented on a Design & Build basis.

2.5. CONSTRUCTION PROJECTS ABOVE THE EU CONTRACT PRICE THRESHOLD

In this case, above the threshold set by the Cabinet of Ministers, requirements must be met to allow architects and designers from EU countries with appropriate qualifications to participate in the procurement.

1. Design and supervision of major alterations and new buildings:

- cultural, scientific and educational institutions
- sports facilities;
- health and social care buildings
- state and local government buildings
- Energy efficiency solutions through a combined procurement for several buildings.

2. open or closed call for tenders or calls for proposals.

3. EVALUATION OF THE MOST ECONOMICALLY ADVANTAGEOUS TENDER

3.1. NATURE OF THE PROCUREMENT, THE RANGE OF TENDERERS AND MARKET TESTING

When organising procurement, the type of procurement to be used must be appropriate to the estimated contract price:

Estimated contract price	Procurement procedure to be followed	Potential number of applicants ¹
Less than EUR 10 000	Invitation to tender following a procedure established by the contracting authority.	More than 290 suppliers.
€10 000-41 999.	Procurement procedure in accordance with Article 9 of the PIL, using the most economically advantageous tender criteria.	More than 200 suppliers.
From €42 000.	Procurement procedure under Article 8 of the PIL, below the EU contract price threshold.	More than 80 suppliers.
Above the contract price threshold set by the Cabinet of Ministers.	Procurement procedure in accordance with Article 8 of the PIL, above the EU contract price threshold.	More than 40 suppliers.

Market research must correctly set the contract price threshold and ensure that the procurement will be successful and that the proposals submitted the tenders will be included in the planned procedure. If the planned contract price is close to the threshold set by the Cabinet, it is recommended that the procurement procedure be selected at a higher threshold. It is not permitted to use a method for determining the estimated contract price which does not apply the procurement or tendering procedures laid down in the PCL.

When carrying out market research for procurement in a specific area, it is recommended to additionally:

- define the skills required - the client should define the skills, previous experience and specialisation Applicants need;
- identify potential suppliers using a variety of information sources - for example, there are active Nearly 300 architectural practices. These firms work with public, commercial and private sector clients and are professional partners to the responsible client in both architecture and construction project management.

LAS has compiled data at² on 298 building contractors for whom architectural practice is the main activity. Additional information on potential applicants can be found on social networks, on the websites of architects' offices, at cooperation institutions and at the regional construction authority. The BIS register allows you to check whether applicants have valid certificates³. The questionnaire will allow to refine the technical specifications, to understand the expected cost limits, to find out a realistic timeframe for the execution of the works and to propose different solutions.

¹ According to LAS data on the number of professional architectural practices in Latvia

² [Architectural practice in Latvia](#)

³ [Register of construction professionals](#)

3.2. QUALIFICATIONS OF TENDERERS

Industry recommended qualification requirements.

Types of procurement: ① up to €41,999 ② below the EU contract threshold ③ above the EU contract threshold.

No.	Qualification requirement	Type of procurement
1.	Up-to-date registration details with the Register of Companies and BIS, including at least 1 certified architect.	①②③
2.	Average turnover in the previous 3 years of at least 75% of the estimated contract price (with a reservation for younger companies).	①②③
3.	A public liability insurance policy covering, for example, at least 75% of the turnover of the design services for the last year.	①②③
4.	The applicant has at least 1 equivalent project experience. (!)	①②③
5.	The company has appropriate and demonstrable professional graphic software licences (Autocad, Archicad, Revit. BIM software, etc.).	①②③
6.	Mandatory site visit by a specialist, e.g. a project manager, for alterations also a certified structural engineer (Structural Designer).(!!!)	①②③
7.	List of certified construction project section managers for the type of work concerned.	①②③
8.	File organisation and data security - mandatory file filing system and paid backup storage.	②③
9.	BIM design (if applicable).	②③

(!) - not to be confused with specialist qualifications. (To ensure the appropriate quality of the design process, the client shall specify as an evaluation criterion: Experience of leading certified specialists in equivalent construction projects. This criterion shall be set for all construction projects, as it is the competence and responsibility of the certified specialists that is critical to the success of the design process and its implementation. The criterion is an additional criterion to the qualification requirements⁴, which lay down minimum requirements for the experience of the tenderer in similar construction projects. It should be noted that the same staff experience as the selection requirement cannot be assessed under this criterion. Maintaining the minimum experience requirements as a qualification criterion and setting additional experience requirements as an additional criterion does not artificially restrict the pool of tenderers and restrict competition, while at the same time giving the client the possibility to additionally assess responsible persons with more experience in designing similar specific projects, thus eventually ensuring a higher quality of the design process).

(!!!) - never a board member or other person who is not a certified professional.

⁴ Guidelines for determining the most economically advantageous tender in construction and design-build procurement p. 31

3.3. ECONOMIC VIABILITY CRITERIA

The list and weighting of the recommended criteria is designed to eliminate the risks of poor quality design and to exclude: delayed deadlines, inappropriate use of specialists, non-compliance with building regulations and good design practice.

It should be recalled that the criteria for evaluating the most economically advantageous tender must be directly related to the performance of the contract in question. Quality criteria are related to the subject-matter of the procurement contract if they relate to any stage of the life cycle of the works, supply or service, as well as to factors connected with the performance of the works, the manufacture or sale of goods or services, or any other process in the life cycle, even if such factors are not directly related to the subject-matter of the procurement contract.

Types of procurement: ① up to €41,999 ② below the EU contract threshold ③ above the EU contract threshold.

The weighting of a criterion depends on the priorities set by the contracting authority and the choice of criteria and the level of detail.

The weighting column indicates the limits of the criterion, taking into account that not all criteria will need to be included.

Once the criteria have been selected by the contracting authority, the sum of all weights must be 100%.

XLS calculation tables are recommended.

GROUPS OF CRITERIA	CRITERIA	SOURCE	TYPE OF PROCUREMENT
1. PRICE		30-40%	
	1.1. Design costs.		①②③
	1.2. Costs of supervision.		
	1.3 Hourly rate for additional work.		
2. STAFF QUALIFICATIONS		30-40%	
	2.1 Experience of leading certified professionals.	10-20%	① ②③
	2.2. BIM competence (if this is not a qualification criterion).	5-10%	②③
	2.3 Additional training for professionals .	5-10%	②③
3. STAFF AND DATA MANAGEMENT/RISK ANALYSIS		15-20%	
	3.1 Staff resources.	5-10%	②③
	3.2 Project Management System.	5-10%	②③
	3.3 Data management system.	5-10%	① ②③
4. TEAMWORK		10%	
	4.1 Experience of the team working together.		②③
5. ARCHITECTURAL SKETCHES AND CONCEPTS		20-30%	
	5.1 Sketches and concepts of architectural solutions.	20-30%	①②③

The criteria are described below according to the numbering of the table.

1.1 DESIGN AND SUPERVISION COSTS

CRITERION WEIGHTING: 30-40%			
The weighting is based on recommendations from other EU countries on the use of SIPs for design. Increasing the price weighting to 50% or more makes the SIP criteria more formal and the tenderer with the lowest price, rather than the best quality service, will win.			
OBJECTIVE			
The most economically advantageous tender shall be determined on the basis of the costs of design and supervision. In order to be evaluated against this criterion, both the total amount of the services and a cost breakdown - a detailed estimate - must be provided. The estimate shall show, in the form set out in the specifications, all parts of the construction project in accordance with the planned composition of the construction project as specified during the market investigation. In order to assess the cost of the supervision, the period of supervision (in months), the frequency of visits, the duties of the supervisor must be specified. Recommendation: add a rate for additional work, e.g. as an hourly rate (EUR/h) for specialists of a certain qualification, but without obliging the client to order such work.			
CALCULATION ALGORITHM			
$X / Z * Y$ = number of points to be obtained, where: X - lowest design cost offered Z - sum of the design costs of the tender Y - maximum score for design costs			
DESCRIPTION			
Each tenderer's tender is evaluated according to an algorithm to calculate this criterion and the result is included in the overall SIP calculation formula.			
EXAMPLE			
The client has determined that the design costs will represent 30% of the total SIP criteria assessment.			
Applicant	Price offered	Calculation	Points gained
A	100 000	$(100\,000/100\,000)*30$	30,00
B	120 000	$(100\,000/120\,000)*30$	25,00
C	135 000	$(100\,000/135\,000)*30$	22,22
RECOMMENDATIONS			
A sound technical specification and market research should ensure that the contractor does not claim additional costs for design and supervision during the performance of the contract. If a tenderer fails to submit a full cost estimate, it shall be excluded or requested to provide clarifications in accordance with the tender specifications. A comparison of all tenders and cost estimate headings may exclude unreasonably low tenders for design work or supervision.			

2.1. EXPERIENCE OF THE LEADING CERTIFIED PROFESSIONALS

CRITERION WEIGHTING: 10-20%			
OBJECTIVE			
Leaders have experience of at least 1 equivalent project over a period of 5-8 years (if experience in supervision is also required), with additional points for more experience - i.e. multiple construction projects. Sufficient information must be provided to verify that the works have been carried out, approved in accordance with the relevant procedures and that the works have been put into operation (if applicable). In order to ensure the quality of the design process, the client shall specify as an evaluation criterion: Experience of leading certified specialists in equivalent construction projects. This criterion shall be set for all construction projects, as it is the competence and responsibility of the certified specialists that is critical to the success of the design process and its implementation. This is an additional criterion to the qualification requirements of⁵, which set out the minimum requirements for a tenderer's experience in similar construction projects. It should be noted that the same staff experience as the selection requirement cannot be assessed under this criterion. By maintaining the minimum experience requirements as a qualification criterion and setting additional experience requirements as an additional criterion, it does not artificially restrict the pool of tenderers and restrict competition, while at the same time giving the client the possibility to additionally assess responsible persons with more experience in designing similar specific projects, thus eventually ensuring a higher quality of the design process. The contracting authority must determine the professionals to be evaluated (construction project manager, head of architecture, head of construction, head of HVAC, energy efficiency expert), the maximum duration of experience to be evaluated (maximum 5-8 years), the maximum number of construction projects to be evaluated and any other relevant criteria necessary in the particular case. Tenderers must be asked to provide references or evidence for each construction project they refer to. Only certified professionals required for the specific project and whose experience is referred to in the tender shall be evaluated. In assessing the experience of each specialist, attention should be paid not only to the number and size of the specific works, but also to their similarity to the actual works.			
CALCULATION ALGORITHM			
$X * Z / Y$ = number of points to be obtained, where: X - maximum score per criterion Z - the mark awarded to the tender for the criterion Y - maximum mark for the criterion-			
DESCRIPTION			
Each tenderer's tender is evaluated according to an algorithm to calculate this criterion and the result is included in the overall SIP calculation formula. A mark between 1 and 20 shall be awarded if the criterion is met, 0 if it is not met; the maximum mark shall be awarded to the tenderer with the greatest and most relevant staff experience, the others being proportionally lower. The highest score shall be awarded to the tenderer whose professionals have the most experience in projects most similar to the actual construction project. The contracting authority should determine on which aspects tenderers will be evaluated.			
EXAMPLE			
The Client has set the relevant criteria at 20% of the total number of SIP criteria and a maximum mark per criterion of 20.			
Applicant	Criterion rating	Calculation	Points gained
A	20	$(20/20)*20$	20
B	10	$(10/20)*20$	10
C	0	$(0/20)*20$	0
RECOMMENDATIONS			
In order to broaden the range of tenderers, it is not possible to define characteristics that are specific to public procurement - museums, libraries, concert halls. Narrowly defined requirements artificially reduce competition and exclude contractors with sufficient experience in private sector construction projects.			
Parameters of an equivalent project:			
Planned object	Equivalent object		
Library, Group 3	Public building, Group 3; 3 library experience cannot be required		
Planned area - 2000 m ²	No more than 60-75% of planned		
Alteration or new construction	Alterations or new build; if specifically one of these is required, justification must be given		
Architectural or cultural monument	Architectural monument <u>or</u> building of heritage value; the project cannot be required to be specifically for an architectural monument		
Restoration, AMI	Restoration, AMI included - as this requires special expertise and knowledge		
Construction project in full	Full construction project; cannot require a specific low-voltage section or medical technology, for example, as each major construction project has a different composition in terms of automation and technology		

⁵ Guidelines for determining the most economically advantageous tender in construction and design-build procurement, p. 31.

2.2. BIM COMPETENCE - ONLY IF BIM IS TO BE USED FOR THE DESIGN OF THE PROJECT

CRITERION WEIGHTING: 5-10%			
OBJECTIVE			
The leading certified professionals involved in the project have in-depth knowledge and experience in the use of BIM for the design section. This criterion need only be used if the client's contract will involve the use of BIM and the client has appropriately trained and experienced staff capable of drawing up an appropriate specification and verifying the tenderer's skills, as well as ensuring the client's management of the BIM project. The BIM criteria cannot be used to narrow down the pool of tenderers. In Latvia, BIM is planned to be mandatory for Group 3 buildings from 2025. BIM significantly increases the efficiency of building design, construction and operation. The BIM criterion can be used in a procurement procedure to require both experience with the system and the use of BIM in the project (an example of the latter). There are different levels of BIM use. Its use in the context of this criterion should be understood as follows: all relevant sections of the construction project (to be defined) will be developed in a BIM system - a 3D environment producing a digital geometric model of the structure containing information on the functions, physical and technical characteristics of the structure. Team communication will take place in the BIM environment.			
CALCULATION ALGORITHM			
$X * Z / Y$ = number of points to be obtained, where: X - maximum score per criterion Z - the mark awarded to the tender for the criterion Y - maximum mark for the criterion.			
DESCRIPTION			
Each tenderer's tender is evaluated according to an algorithm to calculate this criterion and the result is included in the overall SIP calculation formula. A mark between 1 and 5 is awarded if the criterion is met, 0 if it is not met; the maximum mark is awarded to the tenderer with the greatest and most relevant staff experience, the others being proportionally lower. The highest score shall be awarded to the tenderer whose staff has the greatest competence. The contracting authority should determine on which aspects the tenderers will be evaluated.			
EXAMPLE			
The Employer has set the relevant criteria at 5% of the total number of SIP criteria and the maximum mark per criterion at 5.			
Applicant	Criterion rating	Calculation	Points gained
A	5	$(5/5)*5$	5,00
B	3	$(3/5)*5$	3,00
C	2	$(2/5)*5$	2,00
RECOMMENDATIONS			
Examples of evidence of competence to be provided: – the certified professional has completed at least 1 project in a BIM environment in the last 3 years; – the certified professional has experience of working with at least two international, European or national BIM standards; – the certified specialist has completed a minimum of 8 hours of BIM training; – the certified professional uses BIM-related software (provide a copy of the licence). (!) The Procurement Committee must have a specialist who can competently assess the information submitted.			

2.3. FURTHER TRAINING FOR PROFESSIONALS

CRITERION WEIGHTING: 5-10%			
OBJECTIVE			
Give preference to tenderers who invest resources in professional training of staff in the field of environment and sustainability and who are able to apply this knowledge to the relevant construction project. This includes additional training in energy efficiency, sustainability or environmental science programmes, BREEAM or LEED certification schemes, and experience in applying this knowledge to specific construction projects. Again, the additional training to be assessed must be relevant to the performance of the contract and must add value to the contract.			
CALCULATION ALGORITHM			
$X * Z / Y$ = number of points to be obtained, where: X - maximum score per criterion Z - the mark awarded to the tender for the criterion ; Y - maximum mark for the criterion-			
DESCRIPTION			
Each tenderer's tender is evaluated according to an algorithm to calculate this criterion and the result is included in the overall SIP calculation formula. A mark between 1 and 5 shall be awarded if the criterion is met, 0 if it is not met; the maximum mark shall be awarded to the tenderer with the greatest and most relevant staff experience, the others being proportionally lower. The highest score shall be awarded to the applicant whose staff has the greatest competence. The contracting authority should determine on which aspects the tenderers will be evaluated.			
EXAMPLE			
The Employer has set the relevant criteria at 5% of the total number of SIP criteria and the maximum mark per criterion at 5.			
Applicant	Criterion rating	Calculation	Points gained
A	5	$(5/5)*5$	5,00
B	3	$(3/5)*5$	3,00
C	2	$(2/5)*5$	2,00
RECOMMENDATIONS			
Examples of evidence of additional education to be provided: – the applicant's specialist has received additional training in sustainability, environmental protection or materials circularity (mandatory further training courses of 1-3 h do not count as additional training); – the applicant's expertise in sustainability, environmental protection or materials circularity has been used in specific projects and provides evidence; – the applicant's professional has completed additional training in BREEAM or LEED or equivalent (courses recognised by the system maintainer); – the applicant's BREEAM or LEED specialist has applied BREEAM or LEED knowledge to specific construction projects and provides evidence; – the applicant's specialist (head of the architectural department, head of the construction project or head of the HVAC department) has received at least 8 hours of additional training in energy efficiency: passive house courses, PHPP training, certificate of independent expert in energy efficiency, etc; – the applicant's specialist knowledge of energy efficiency has been applied in specific construction projects and evidence of the energy efficiency values achieved. (!) BREEAM and LEED criteria cannot be used <u>be used</u> to narrow the pool of applicants.			

3.1. STAFF RESOURCES

CRITERION WEIGHTING: 5-10%			
OBJECTIVE			
This criterion is in the interest of the contracting authority in favour of the tenderer who reduces the risks of errors and failure to meet deadlines in the performance of the contract, is able to carry out internal checks and controls with qualified staff, and is able to ensure the replacement of specialists. However, this criterion must be worded carefully, bearing in mind that it must relate to the specific contract and the specialists involved in its performance. Correct selection and evaluation of these criteria minimises the following risks for the client: – The 4-eye principle reduces the risk of errors; – the possibility of replacing staff reduces the risk of delays in the event of staff sickness or absence.			
CALCULATION ALGORITHM			
$X * Z / Y$ = number of points to be obtained, where: X - maximum score per criterion Z - the mark awarded to the tender for the criterion; Y - maximum mark for the criterion-			
DESCRIPTION			
Each tenderer's tender is evaluated according to an algorithm to calculate this criterion and the result is included in the overall SIP calculation formula. A mark between 1 and 5 is awarded if the criterion is met, 0 if it is not met; the maximum mark is awarded to the tenderer with the most reliable staff resources, the others proportionally less. The highest score shall be awarded to the tenderer with the most reliable staff resources. The contracting authority should determine on which aspects the tenderers will be evaluated.			
EXAMPLE			
The Employer has set the relevant criteria at 5% of the total number of SIP criteria and the maximum mark per criterion at 5.			
Applicant	Criterion rating	Calculation	Points gained
A	5	$(5/5)*5$	5,00
B	3	$(3/5)*5$	3,00
C	2	$(2/5)*5$	2,00
RECOMMENDATIONS			
Criteria to be assessed and evidence to support the award of points: – the tenderer has access to, and specifies in the tender, a certified construction professional who can carry out internal quality control; – the tenderer has available and specifies in the request for tender at least 1 additional construction professional (e.g. architectural) in the same field with equal or lesser experience (in terms of number, group or area of works) to replace the priority nominee for a specified period (e.g. 1 month); – the tenderer has established and maintains an ISO 9001 or equivalent quality management system covering all the above; –			

3.2. PROJECT MANAGEMENT SYSTEM

CRITERION WEIGHTING: 5-10%			
OBJECTIVE			
The company has established and maintained a project management system. This criterion is in the interest of the client in favour of a tenderer who systematically plans the workload of resources and staff, ensuring that each project has the necessary resources and follow-up. Correct selection and evaluation of these criteria minimises the following risks for the contracting authority: – default risk; – the risk of staff shortages or overloading; – inadequately calculating the risk of human resources (time required) devoted to the project; – risks of insufficient cash flow.			
CALCULATION ALGORITHM			
$X * Z / Y$ = number of points to be obtained, where: X - maximum score per criterion Z - the mark awarded to the tender for the criterion Y - maximum mark for the criterion			
DESCRIPTION			
Each tenderer's tender is evaluated according to an algorithm to calculate this criterion and the result is included in the overall SIP calculation formula. If the criterion is met, a mark between 1 and 5 is awarded, if not, a mark of 0 is awarded; the maximum mark is awarded to the tenderer whose project management system is the most comprehensive, the others being proportionally lower. The highest score shall be awarded to the applicant whose project management system supports the most components. The Contracting Authority should determine on which aspects the tenderers will be evaluated.			
EXAMPLE			
The Employer has set the relevant criteria at 5% of the total number of SIP criteria and the maximum mark per criterion at 5.			
Applicant	Criterion rating	Calculation	Points gained
A	5	$(5/5)*5$	5,00
B	3	$(3/5)*5$	3,00
C	2	$(2/5)*5$	2,00
RECOMMENDATIONS			
Criteria to be assessed and points to be awarded for the Project Management System (PMS): – The PPS maintains control of project deadlines and overall timelines; – The PPS keeps track of planned and actual project/work hours; – The PPS ensures control of financial flows (incoming and outgoing payments, salaries, etc.); – The TSO shall ensure delegation of tasks and follow-up; – the company management provides weekly or other regular management reports on the progress of the project (minutes, notes, time scheduled for meetings); – A PPS can be either outsourced software or a tool developed and maintained in-house by the company, it is important that it contains all or some of the controls mentioned here; – the tenderer has established and maintains an ISO 9001 or equivalent quality management system covering all the above. Documents to be provided: proof of subscription or purchase of software (e.g. Microsoft Project, Scoro), screenshots of relevant sections, a detailed XLS planning tool that is regularly maintained and updated would also be appropriate proof. A written statement or description without specific software and its use is considered inappropriate.			

3.3. DATA MANAGEMENT SYSTEM

CRITERION WEIGHTING: 5-10%			
OBJECTIVE			
The applicant shall have in place a system for recording, filing and archiving files and drawings or an ISO 9001 quality management system or equivalent. Correct selection and evaluation of these criteria minimises the following risks for the client: – Circulation of outdated versions of drawings and related errors and corrections; – partial or total loss of data; – problems with the traceability of drawings and corrections made, management of drawings during examination and supervision – providing incorrect and outdated documentation to the contractor; – transfer of outdated and irrelevant documentation to the client, including in the form of editable files, for further use in the life cycle of the building; this avoids the risk that documentation for materials and systems used in the building is largely unavailable or out of date.			
CALCULATION ALGORITHM			
$X * Z / Y$ = number of points to be obtained, where: X - maximum score per criterion Z - the mark awarded to the tender for the criterion Y - maximum mark for the criterion			
DESCRIPTION			
Each tenderer's tender is evaluated according to an algorithm for calculating this criterion and the result is included in the overall SIP calculation formula. A mark between 1 and 5 shall be awarded if the criterion is met, 0 if it is not met; the maximum mark shall be awarded to the tenderer whose data management system is the most complete, the others being proportionally lower. The highest score shall be awarded to the tenderer whose data management system supports the most components. The contracting authority should determine on which aspects the tenderers will be evaluated.			
EXAMPLE			
The Employer has set the relevant criteria at 5% of the total number of SIP criteria and the maximum mark per criterion at 5.			
Applicant	Criterion rating	Calculation	Points gained
A	5	$(5/5)*5$	5,00
B	3	$(3/5)*5$	3,00
C	2	$(2/5)*5$	2,00
RECOMMENDATIONS			
Criteria to be assessed and points to be awarded for a data management system: – the applicant has set up and maintains a system of project folders; – the tenderer has established and maintains a system for naming and dating project files that allows each drawing to be identified by date and audit identifier; – the applicant shall be able to demonstrate the arrangements for issuing and archiving drawings, files and documents; – the applicant uses a secure external data exchange server in a paid version, specifying the amount of data stored and the backup algorithm, contract or proof of subscription service; – or - the applicant provides a local server for backup copies, specifying the algorithm and security for making the copies; – the tenderer has established and maintains an ISO 9001 or equivalent quality management system, including a data recording and archiving section (or all of the above). Documents to be submitted: a brief or more detailed description of the system, screenshots of the data, folders, files in question to the extent that the existence of the system is indisputable, a data storage service contract, proof of subscription service.			

4.1 EXPERIENCE OF WORKING TOGETHER AS A TEAM

CRITERION WEIGHTING: 10-15%			
OBJECTIVE			
This criterion is in the interest of the contracting authority in favour of the tenderer who employs more certified professionals with previous experience of cooperation. The benefits for the client are a cohesive team with a common vision for the project, smooth communication and hierarchy among themselves. In order to ensure a high quality of the design process, the client may specify as an evaluation criterion: The team's previous cooperation experience. This criterion may assess the experience of the responsible designer and the subcontractors, as well as the specialists responsible for the project (construction project manager, section manager). The existence of such experience may prevent various risks. For example, slow and incomplete communication between the parties, misunderstandings and disputes, which can lead to missed deadlines and ultimately compromise the quality of the design. If such a criterion is used, the client can choose how extensively this experience is assessed.			
CALCULATION ALGORITHM			
$X * Z / Y$ = number of points to be obtained, where: X - maximum score per criterion Z - the mark awarded to the tender for the criterion Y - maximum mark for the criterion			
DESCRIPTION			
Each tenderer's tender is evaluated according to an algorithm to calculate this criterion and the result is included in the overall SIP calculation formula. The criterion shall be scored from 0 to 10, with the maximum score being awarded to the tenderer with the greatest and most relevant experience of teamwork, the others being proportionally lower. Principle for awarding marks: – mark 10 - where the tenderer and all the staff responsible for the design have collaborated on at least one design of a public building in Group 3; – mark 7 - if the tenderer and 80% of its staff: the construction project manager and the head of the architectural department and at least 75% of the other staff responsible for the construction project have collaborated on at least one design of a public building of category 3; – mark 3 - if the tenderer and his/her project manager or head of the architectural department and at least 50% of the other staff responsible for the construction project have collaborated on at least one design of a public building in Group 3; – 0 - if the tenderer and his/her project manager or head of the architectural department and less than 50% of the other staff responsible for the construction project have collaborated on at least one design of a public building in Group 3. The period of cooperation to be shown is 5 years.			
EXAMPLE			
The Employer has determined that the relevant criteria will represent 10% of the total number of criteria for the most economically advantageous tender and the maximum mark to be obtained per criterion is 10			
Applicant	Criterion rating	Calculation	Points gained
A	10	$(10/10)*10$	10,00
B	7	$(7/10)*10$	7,00
C	3	$(3/10)*10$	3,00
RECOMMENDATIONS			
Although this criterion is to be fulfilled before the conclusion of the procurement contract, the procurement contract should contain an obligation to maintain compliance with the criterion during the lifetime of the contract. In such a case, appropriate contractual arrangements should be established and sanctions for non-compliance should be provided for. The tenderer shall provide information, in accordance with the specifications and the planned composition of the project, on which specialists from the relevant parts of the project have collaborated in the past. BPV, ARDV, ESP specialist may be 1 person, provided that the relevant certificates are held. Documents to be submitted: BIS screenshot or construction design with prior cooperation certificates from the client or all specialists (note that the designer does not have access to BIS if the power of attorney has expired). If two projects with different teams are presented, the points are counted according to the smaller project.			
SIGNIFICANT PARTS OF THE CONSTRUCTION PROJECT:			
– Architecture (AR), Construction Project Management (CPM), in many cases the same person; – building structures (BK) – heating, ventilation, air conditioning (HVAC) – Energy Performance Certificate (EPC) of the building (where energy performance criteria are a particular focus).			

5.1. ARCHITECTURAL SKETCHES AND CONCEPTS

CRITERION WEIGHTING: 20-30%			
OBJECTIVE			
The tenderer shall provide 8-24 working hours of graphic and textual material of sketches or concepts demonstrating a professional understanding of the subject-matter of the procurement. Depending on the site, it is recommended to request the following material: – sketches of the facade renovation; – sketches of the functional layout; – the concept of restoration and heritage integration; – the concept of circularity of materials; – energy efficiency The contracting authority must assess whether and how to apply this criterion in each case. When used correctly, this criterion reveals the most economically advantageous tender better than any other. The contracting authority may also give it a higher weighting in the overall assessment, up to 20-30%. However, defining and evaluating this criterion requires more resources and expertise on the part of the contracting authority. Examples of material to be submitted: – facade painting sketches for building insulation (residential, school, kindergarten) – a redesign sketch for a specific group of premises; – a photo collage to integrate the historical heritage with relevant examples; – Landscaping sketch with photo collage for the outdoor space project; – a description of how to integrate reusable or recoverable (recyclable) materials; – a description of how the energy performance objectives of the planned construction project will be achieved, with specific tasks and solutions or alternatives to be considered (this point should not be converted into a formal submission of copied documents); – interior sketch or photo collage for an interior design project. This criterion is not recommended for a new building project, as the amount of work required is more in line with a design competition. Advice on the suitability of the requested material can be obtained from the Latvian Association of Architects.			
CALCULATION ALGORITHM			
$X * Z / Y$ = number of points to be obtained, where: X - maximum score per criterion Z - the mark awarded to the tender for the criterion Y - maximum mark for the criterion			
DESCRIPTION			
Each tenderer's tender is evaluated according to an algorithm to calculate this criterion and the result is included in the overall SIP calculation formula. A mark between 1 and 20 shall be awarded if the criterion is met, 0 if it is not met; the maximum mark shall be awarded to the tenderer whose submitted solution is most in line with the requirements of the client, the others being proportionally lower. The highest score shall be awarded to the tenderer whose sketches or solutions receive the highest number of points. The contracting authority should determine on which aspects the tenderers will be evaluated.			
EXAMPLE			
The Client has set the relevant criteria at 20% of the total number of SIP criteria and a maximum mark per criterion of 20.			
Applicant	Criterion rating	Calculation	Points gained
A	20	$(20/20)*20$	20
B	10	$(10/20)*20$	10
C	0	$(0/20)*20$	0
RECOMMENDATIONS			
The evaluation of this criterion must be carried out by a professional architect (representative of the building authority or LAS, or an outsourced specialist). Works of the scope of the competition may not be requested. In defining the terms of reference for the criterion, the architect member of the Procurement Committee will help to describe the scope of work that can be requested and how it should be assessed. The Procurement Committee must create a checklist so that an evaluation report can be established, for example: – whether the material submitted is site-specific (rather than generic phrases copied from a copy); – the client's brief has been taken into account; – whether the submission has added value - an architect's or engineer's individual view of the problem to be solved, provided in addition to the client's brief; – whether the client sees the potential for realisation in the submitted material; – whether the material contains innovations - e.g. clever use of space, use of renewable resources, new gathering places as a social component. Material which already constitutes partial performance of the contract, such as specific floor plans with tables of volumes, cost calculations, etc., should not be requested. (!) The Tender Committee must have a specialist who can assess the information submitted competently. This criterion can be expanded on the basis of ISO standard 20887:2022.			

LATVIAN UNION OF ARCHITECTS

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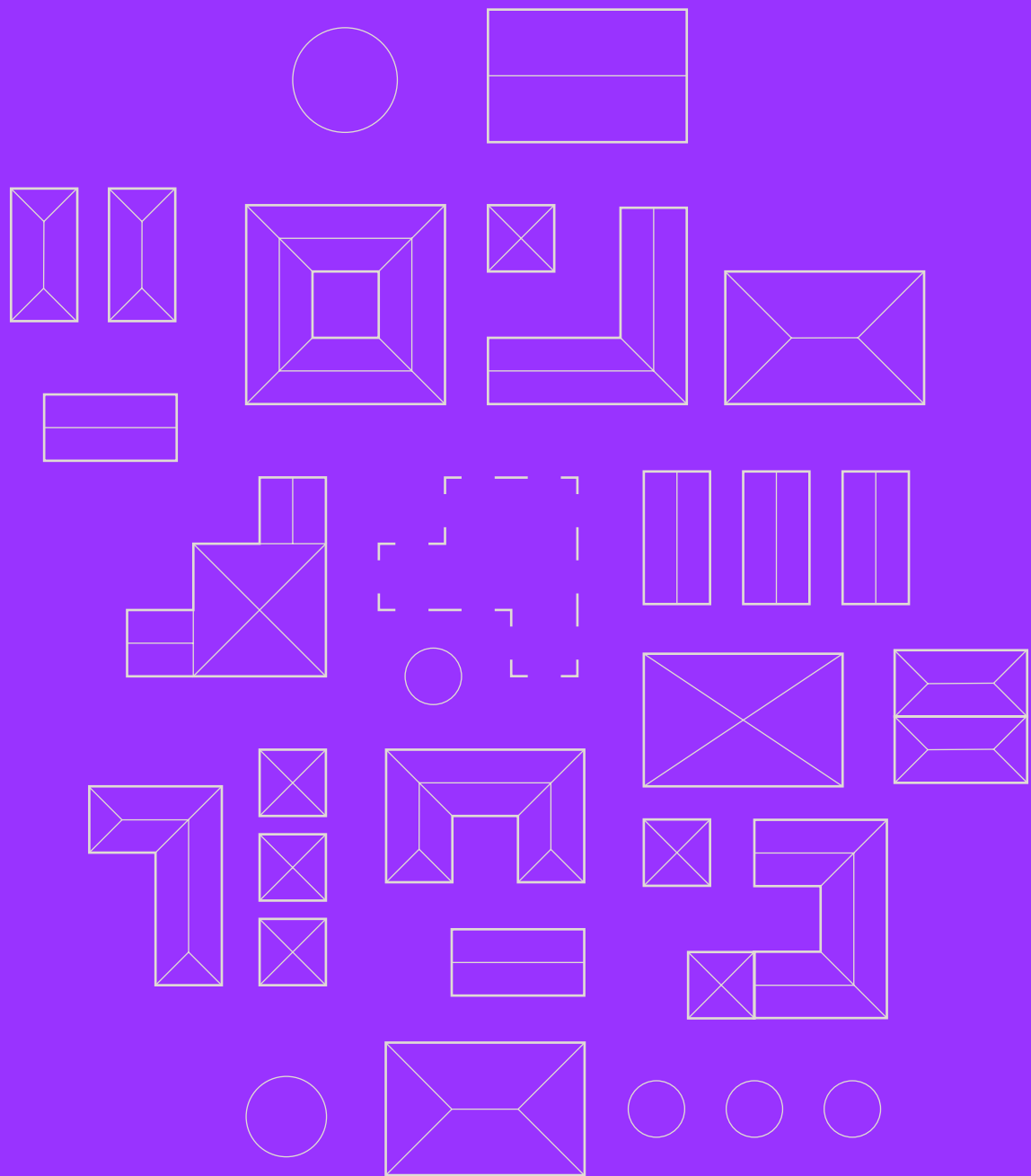
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Swedish Guidelines (draft)

Architecture for society
On public procurement of
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Architecture for society On public procurement of architectural services

Developed by Katarina
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Table of contents
Type text

KONCEPT

Introduction

The architecture that the general public stands for is of great importance to all of us. It is important societal functions – such as schools, roads and hospitals – that public architecture should support. The realization of what resources to invest to create our daily environments requires care and reflection in order for them to be well managed and become sustainable, functional and beautiful.

This is written to you who will engage an architect for a public assignment and have the ambition to create a very good result, primarily for the project as a whole, but also during the important development and design phase.

The best architecture often comes about when the developer and architect work together to achieve a good result. It is therefore important to find a partner for the stages when a project is created. It is about being able to create common visions and realizable goals that last through a long process. It is not always easy and easy during the journey, but you should be able to feel that it was worth the trouble when you see the result.

We will discuss various tools contracting authority or entity can use to find the "right" architect for a specific project. Consequences of different paths will be described and how to think more strategically when engaging an architect.

Our hope is that you will become friends with LOU (Swedish law on procurement) and see its possibilities. With our experience, we believe that we can see the public procurement from both the authorities' and consultants' perspectives and with this writing we want to help you to meet in good collaborations.

The regulations and ambitions of public procurement from the legislator's point of view

For whom is the regulation of public procurement? – Not for me, you can certainly feel before the work to make a procurement dossier. The administration and bureaucracy can be extensive and the meaning of many of the elements to be ticked off the list, reference taking, checking registrations, ESPD, tables, lists and documentation can sometimes be difficult to understand. It is important to create space to do what is really the most important goal of the procurement – to find the right consultant for the project.

We will come back to the basic principles of public procurement many times. However complicated the regulatory framework may seem, the basic principles are a good support for different positions in a procurement process. It is not for nothing that every lecture or handbook on public procurement begins there.

The basic principles are:

- 1 Non-discrimination
- 2 Equal treatment
- 3 Transparency
- 4 Proportionate
- 5 Mutual recognition

Or in other words – everyone should get the chance, competition should exist and corruption does not belong here. You should also be able to follow the entire chain of decisions. When it comes to the procurement of architectural services, it is above all the principles of equal treatment, transparency and proportionality that we will return to. It will be about setting reasonably high demands on the bidders, being able to justify the assessments that are always made in a procurement of services and that all bidders feel that they have received equal treatment. These principles are largely about safeguarding the interests of suppliers but also support the contracting authority for a structured procedure, not least in the decision-making and assessment process that needs to be done.

It is possible to find support in the regulations to make smart, goal-seeking procurements with high ambitions when it comes to finding competence and quality. When the EU Directive on Procurement were last revised, the Commission's objectives included providing better support to the authorities to procure quality. Now the authorities are encouraged to talk and negotiate with bidders and suppliers, to make trade-offs between price and quality and there

are new procurement procedures that appear to be more tailored for architectural procurement.

In the recitals to the LOU Directive 2014, there are some overarching objectives that the new directive wants to achieve:

- support the achievement of the 2020 European Strategy for Smart and Sustainable Growth for All*
- to give SMEs better access to the European market and to better support public procurement for common societal objectives*
- to give contracting authorities more flexibility to choose a procurement procedure under which negotiations can be conducted*
- to encourage and facilitate a greater focus on quality in public*

The possibility or importance of being able to assess competence has also become clearer in the new regulatory framework – especially with regard to intellectual services. The fact that the competence of the architects who will carry out the assignment is crucial for the quality of the assignment is hardly questionable. This is further support for not only being able to but should also assess competence when buying architectural services.

Additional support for procuring architects who can help the authority create good architecture is provided in the policy for Gestaltad habitat that the Riksdag adopted in 2018.

Insertion: Designed living environment – ambitions for public procurement in Sweden.

Architecture, form and design should contribute to a sustainable, equal and less segregated society with carefully designed habitats, where everyone is given good conditions to influence the development of the common environment.

It shall be achieved by:

– sustainability and quality are not subject to short-term economic considerations;

– knowledge of architecture, form and design is developed and disseminated,

The public is exemplary.

– aesthetic, artistic and cultural-historical values are taken advantage of and developed,

– environments are designed to be accessible to all, and

– cooperation and collaboration are developed, within the country and internationally.

There is therefore support that everyone's interests can be met in a procurement process.

How are architects traded today?

The public market is large for the architectural industry – about half of the market is made up of public procurement or just over SEK 4 billion. This figure can be compared to public investment in buildings and installations in the order of EUR 110 billion per year. (The source should be taken with *The figures should be taken with a pinch of salt but they are approximately at this level.*) In these figures, the municipal companies are not included.

The architects establish the basis for very large investments in hospitals, roads, schools, parks and cities that everyone in society should use, or suffer a little depending on how you look at it. The investor who has ambitions with the quality of the end result understands that it is important to choose the right architect to work with. They affect how it looks and works, what it costs to invest and maintain and not least how sustainable it becomes. It is early in a construction project that a developer has to make many strategic decisions that have a major impact on the end result. If you have a good collaboration with the architect and other consultants, the conditions for achieving the goals of the project are much greater.

The Swedish National Audit Office has made a similar observation in its letter about how the state authorities act (Government letter 2018/19:24 – better as footnote):

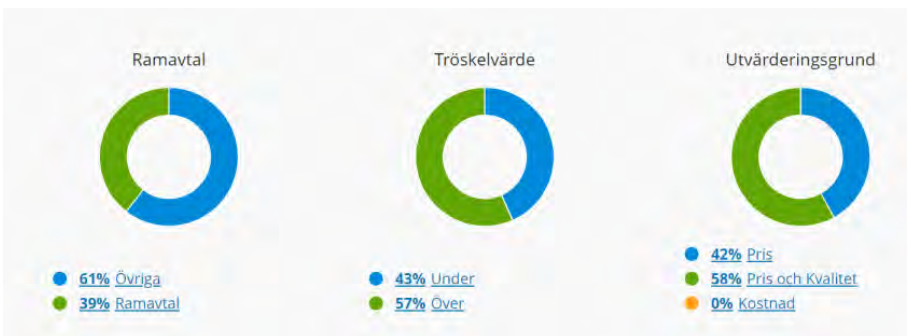
"According to the authority, the procurement is often carried out according to current rules, but the opportunities to do good business are not fully exploited. It is also not clear that the authorities are fully taking advantage of the consultants' expertise, and the opportunities for competence transfer from the consultants." All in all, there is a risk that the authority will not have the competence or effect of a purchase if the authorities lack their client competence." Harsh words may be thought but there is probably a grain of truth in these words even from our experience. A good rule of thumb is that in a targeted procurement not only do formally right, but also gain the trust of the bidders. Then the possibilities to gain space to make assessments of competence in the procurement are much greater and thus the possibility of finding the right supplier much more likely.

Insertion: Significant values that make up society's common resources and that are important for our living environment!

Good architecture can withstand the abrasion of time, eye and hand

Sveriges Arkitekter

Neither architects nor architecture are consumables – it would be very expensive for society then.



Source: Opic

A little over half of all architectural procurements are about framework agreements, i.e. when a contracting authority contracts one or a few architects for ongoing assignments for a maximum period of four years. This may include detailed planning, maintenance and management, or recurring projects that are planned but may not be specified precisely.

A little over half of all procurements also involve assignments with a value of more than 2 million SEK, i.e. above the threshold for services as more administration and transparency are required than in procurements below the thresholds.

Architects Sweden's experience is that the majority of all procurements of architects in recent years have been made through open procedures. This means that anyone who considers themselves qualified can submit tenders in a fully and in-house written procedure.

The fact that price and quality are weighed together in the evaluations in close to 60 percent of the procurements reported in the statistics is a truth with modification. If these procurements are analysed, it will soon be discovered that the price of the service will, after all, be of crucial importance even if a rather advanced evaluation model has been set up. Skills and experience are evaluated in many cases rather quantitatively than qualitatively. Assessment of project organisation, working method, competence and the like occurs less often.

Kommentiert [KOC1]: IN Sweden procurement under the thresholds are regulated almost in the same way as over these values.

High qualification requirements that exclude suppliers rather than to target competent applicants are also common – in practice, the lowest price applies. It cannot be satisfactory either for the contracting authority or the tenderer.

KONCEPT

Toolbox

- different procurement procedures.

There are several different ways to trade up according to LOU and it is important to choose the right procedure depending on the result that is sought.

No matter what form of procurement you choose, the preparation is always important. Cooperation between those who will use the services and those who manage the procurement procedure is important. Those who will use the services know what kind of consultant they want and what will be important in the collaboration. They also usually know what the market has to offer. Those who know **procurement technology** are good at the law and the administrative procedures. It is about getting the right balance between formalities and creating interest and confidence among prospective bidders for a really good procurement. It is just as important that the procurement is actually formally correct as it is that the tenderers have confidence that it is fair and sensible. Everyone knows that it is difficult to procure intellectual services when there are the necessary elements of assessment and balance, but respect for procurement can be created by having as good competence in the procurement process in terms of procurement technology as in the assessment of competence and ability.

Groundwork

An early dialogue can and should be conducted with suppliers and other experts or industry representatives to understand what the consultants can offer and what is reasonable to ask for in the procurement. Such dialogues can give a picture of what the market looks like, such as how many consultants that have experience in delivering the services that the authority plans to ask for. If it emerges that there are not so many suppliers who have experience of the type of assignments to be traded up, you may need to consider what requirements should be placed on the suppliers, which consulting constellations and competences may be suitable to ask for and other market-specific conditions. These discussions can take place in many different ways; by meeting individual consultants, having major supplier meetings or sending out specific questions or procurement documents for referral. The architects can of course see this as a way to influence the procurement in order to be able to give the best possible offer. This may be an advantage for the contracting authority as long as the procurement is not tailored for a particular consultant and competition is limited.

It is also important to consider how to limit the assignment in preparation. For example, it is common in framework agreement procurements to try to find architects who can do all sorts of different kinds of assignments. It is of course safe to know that you have an architect available who can **draw** all the different types of assignments that may be relevant during a framework agreement period. But is it certain that competition will not be restricted? Are there enough architects who can design everything from preschools to nursing homes? You can also consider whether you then contract an architectural office that is perhaps quite good at all the different types of buildings that you need but maybe only have cutting-edge expertise on one of them. Often, during a framework agreement period, a municipality may need slightly different competences and really need to have a group of consultants with different specialties within the framework agreement. With a wise call-off model or process for renewed competition, it is quite possible.

It may also be important to limit a framework agreement so that the contracting authority is not obliged to use any of the ramified architects if any project is added that the framework architects are not specialists in.

Forms of procurement

The most common way to procure architects is an *open procedure* whereby everyone can submit full tenders that are evaluated. This process is often quite bureaucratic, in principle all tenders should be evaluated in their entirety, and can lead to sorting out good bidders for formal reasons rather than finding the best one. There is also a risk of errors and misunderstandings as there are very limited opportunities for dialogue, as negotiations must not take place in open procedures. We see a tendency to set very high or specific qualification requirements in these open procedures, which can be to the detriment of both tenderers and authorities. The qualification requirements may be set high to limit the number of tenders with the risk of successful suppliers being excluded.

Although there are opportunities to invite suppliers to interview or presentation of tenders, it is not common and we see that contracting authorities are more in contact with referees to understand and assess the tenderers' competence than the tenderers themselves. Surely it would hardly occur in the private market for a developer to hire an architect without first talking to them about their offer?

In open procedures, extra care needs to be taken with the procurement documents so that they are clear and cannot be misunderstood. It also provides a significantly better basis for assessing competence and working

method if there is an opportunity to meet with the most interesting tenderers for the presentation of their tenders.

The disadvantage of many tenders through an open procedure can be avoided by using different types of *selective procurement procedures* – or procedures with so-called prequalifications. In such a process, a smaller group of tenderers are selected who may make 'sharp' tenders. In such a process, there are greater opportunities to ask the consultants to present their tenders, and the selected consultants can also submit more precise or project-adapted tenders. In view of proportionality, it is simply possible to ask tenderers to spend a little more time making specific tenders in a selective process. There are also greater opportunities to make use of assessable evaluation criteria, as in such processes the contracting **authority can create scope in** putting more resources into evaluating the most promising consultants.

Already in the recitals to the EU directives governing our legislation, the Commission identified the contracting authorities' need for forms of procurement that allowed dialogue and competition. Among the motivational texts of the Directive, the Commission writes (Directive 2014/24/, recital No 43):

For services or goods requiring adaptation or design, the use of a negotiated procedure under competition or a competitive dialogue is likely to add value. Such adaptation or design requirements are necessary in particular with regard to complex purchases, such as the purchase of sophisticated goods, intellectual services, such as certain consultancy, **architectural** or engineering services, or major information and communication technology (ICT) projects. In such cases, negotiations may be necessary to ensure that the goods or services in question meet the needs of the contracting authority.

Two forms of procurement are thus available that must be tailored for architectural procurements: negotiated procedure with previous advertising and competitive dialogue. They are not used very often for architectural procurements, but according to LOU, they can be used when:

'The needs of a contracting authority cannot be met without the adaptation of readily available solutions

or

The procurement includes design or innovative solutions" (LOU, Chapter 6, Section 5).

The negotiated procedure with previous advertising and competitive dialogue is similar and provides for the possibility of dialogue or negotiation on how the contracting authority should specify its procurement documentation. Simply put, the competitive dialogue provides even greater opportunities to engage in dialogue on possible solutions for the mission. It can be about how the service should be specified, what a good project organization can look like or how the project can be divided into different phases. Which business model is best for the assignment can be discussed, e.g. whether fixed prices, incentives or variable fees against the budget should be used. For example, it is possible to even negotiate prices, which means that the negotiation can arrive at a fixed price in the negotiation and there will be no need to use price for a selection criteria in the final choice of supplier. The purpose of the dialogue is to identify how the contracting authority's needs can best be met. In this form of procurement, a small number of tenderers who have been selected through a so-called prequalification procedure are negotiated.

The dialogue may be carried out in successive stages and after each step the solutions that the Authority wishes to continue discussing are chosen until the Authority has found solutions for its needs. It is possible to reimburse the bidders for participation in the dialogue, which is recommended if the work effort is specific to the assignment, e.g. possible solutions to the assignment.

Competitive dialogue is a form of procurement that both assesses the ability of architects/consultants and project opportunities in the procurement phase and gives the contracting authority the opportunity to conclude an agreement with one of the tenderers. Properly managed, this process can be set up so that it resembles a parallel assignment that is often used in the private market but which is not a regular way to choose architects according to LOU.

It is possible to have dialogue and negotiate in principle everything in these procedures, except the selection criteria and the scope of the procurement.

At the end of the negotiation, the contracting authority shall draw up a procurement dossier for which all remaining tenderers shall submit tenders.

Architects are happy to participate in this type of procurement provided that the process is carried out competently with respect for the work done during the procurement phase. Therefore, it is important that there are clear conditions for remuneration, copyright and usufruct and that assessment is perceived as relevant and competent.

There is no developed practice for the procurement of architects in relation to these two forms of procurement, as the conditions for procuring architectural services in this way have developed with the change in LOU 2017. With a carefully planned approach, there are great opportunities with these two new procurement procedures that can benefit the contracting authority and interest potential suppliers.

Sketch of the process of competitive dialogue within the framework of LOU. This is a multi-stage process where the dialogue itself is about specifying a tender dossier. It is probably important to be very clear about what the different steps in the process are aimed at. The purpose of the dialogue is not to resolve certain issues but to specify the tender documentation. What exactly this means is not tested for architectural services.

The prequalification is basically done out as a regular prequalification. To think about:

- Make it clear that it is a competitive dialogue, order of qualification and selection criteria both for the selection of architects and the choice of tenders.
- Architects should be paid to participate in the competitive dialogue. It involves a high degree of reading and work.
- It should be clear how sketches etc. may be used in the further process. Architects should retain the right of use until contracts are signed. The purpose of the dialogue process is not that the authority should obtain solutions, but to get a better tender basis.

-
- Be careful about the skills and experiences you are looking for to participate in the dialogue and in the further design.

Dialogue. Focus on developing "technical specifications" as stated in the law - what will be the task of architects in the further process, what method to use? How do architects think that they can solve the task, some critical elements such as approach, expression, prioritization of requirements, this can be expressed in sketches. What method to use in the project? How should we organize the project?

- Overall question - do architects have the skills and ability to solve the task within reasonable limits? More focus on method and ways of investigating possible solutions than the solution itself. Example - do we think it is possible to solve the task within the conditions that we have formulated, do we ask for the right skills, do we allocate resources correctly in the project, are there any critical points we need to devote more resources to? The architects receive a requirement specification - a program - focus on crucial points. A dialogue meeting - one by one - feedback a general assessment of sharpening of issues and choices. Dialogue meeting two - the authority presents its conclusions and receives feedback from the architects. The meetings are documented and become part of the tender documentation.

Tender documentation. The authority formulates a concrete tender basis - equal for everyone. Includes the opportunity to assess according to the criteria formulated in the advertisement, ask for the ability to solve the task, method and possible solution in principle (what qualities are important to protect) as well as cost of the assignment. The authority formulates an AFdel and a program for the assignment.

Tender - the architects respond to above.

Evaluation - according to the criteria formulated in the advertisement

Project Competition

A design competition or architectural competition is a common way of choosing an architect if the contracting authority is interested in both choosing the architect and the solution during the procurement phase. If an architectural competition is conducted, the contracting authority has the right to negotiate with the winning architect after the end of the competition for a further

assignment, provided that it is stated in the advertisement to the design competition that the intention is to do so.

There are several different types of competitions. The two most common are open competition where everyone can submit entries and the assessment is only about choosing the best solution or invited competition where first a number of architects are selected that the competition organizer believes can make a good contribution and has the capacity to carry out the assignment. The selected architects submit proposals for solutions that a jury assesses.

Project competitions are described in a special chapter of LOU and are in the proper sense not a procurement procedure but if a competition is conducted, the contracting authority has the right to negotiate with the winning architect for continued assignments, in practice the winning architect may be directly procured.

Architectural competitions have existed since "time immemorial" and there is a strong international practice and the regulations for architectural competitions look much the same all over the world. In Sweden there are industry-wide competition rules, which is unique and means that representatives of both clients /developers and consultants agree on how competitions should be conducted. These industry rules also connect to LOU.

In a project competition, proposals are submitted on how a specific task can be solved. The criteria in the competition programme for the selection of projects are only about the project. It is a jury composed of different competencies that chooses which project to recommend for implementation.

It is possible to arrange a project competition almost for any type of project, small or large, complex or simple but often a project is arranged when it comes to an important project for the organizer, when you want to be able to compare different ways of solving the task or when you want to give the opportunity for users or local residents to see and discuss different possibilities.

An architectural competition is

- for the client a safe way to find the optimal association of form, function and economy for their project and at the same time choose the best architect for the project. It's also a way to show that you want something out of the ordinary with your project. The competition provides maximum scope for a creative process and in-depth knowledge of the project's prerequisites and opportunities.

- for politicians and the public , incentives and a basis for public discussion on important architectural or urban planning issues as well as an opportunity to market and draw attention to their own locality/municipality.
- . for the architects a way to test and develop their capabilities in equal competition with other architects.
- for architecture is an important stimulus for development and creativity.

Architectural competition is a process that has a very strict structure where different stages of the process have definite purposes and objectives. Despite this, the architectural competition is the procurement method where a lot of creativity and innovation is possible to achieve.

As Bengt Lindroos said, "Competitions are the seeds of architecture"

Step-by-step competition process

Programming

Before arranging an architectural competition, the client should carefully think through their strategy for the current project and have a clear idea of the process and what task they want the contestants to solve. The fact that the competition organizer must take an early position on the program issues and formulate goals and requirements is one of the advantages of the competition.

Arranging an architectural competition includes a commitment to the contestants, who put in a lot of work and invest their creativity and skills to prepare their competition proposals. The competition program is to be regarded as an agreement between the architect and the competition organizer. Before the competition starts, the competition programme must be approved by all jurors and, when the competition is desired to be approved by Sveriges Arkitekter, by the organisation's competition committee.

Selection criteria

The selection criteria indicate to the contestants what the organizer will place emphasis on the assessment. The jury shall base its assessment on these criteria.

It is common for the selection criteria to revolve around three important main areas, which are specified in each competition. The jury shall always make an overall assessment of these three main criteria.

1. Architectural design – expression.

The desired expression of the project should be clearly described in the program. Whether the project's relationship with the environment is crucial for the assessment must also be stated.

2. Functionality.

The programme shall indicate which of the project's functions are most important for the assessment.

3. Feasibility.

It is reasonable to give the contestants information about, for example, what budget there is for the project and that calculations are made during the assessment work. Technical solutions can also be important for feasibility. The developmentability of the proposals in the further design can be decisive for feasibility.

Assessment

In a competition, there must be a jury. Its composition is of great importance for the outcome of the competition and the future of the project. The organizer has a majority in the jury, so that those who will manage the result of the competition feel that they have both control over and responsibility for the competition results. In public procurement, at least one third of the jury must have the same professional qualifications as the contestants.

The jury must formulate clear justifications for its decisions in a jury opinion. There, the jury should also give an account of the lessons learned and insights about the project it received during the assessment process. The jury opinion shall explain the qualities, development opportunities and possible shortcomings of the winning proposal to those who subsequently take over responsibility for the project's continuation and implementation. It is also important that the participating architects receive feedback on their proposals, even if they are not rewarded.

Innovation partnership

Innovation partnerships may not be a procurement procedure that will be used very often when it comes to the procurement of architectural services, but some descriptive words may still be appropriate. In an innovation partnership, a good or service is developed during the procurement procedure itself with the aim of then being able to put the product or service into production. Those who

develop should be able to deliver the goods or services. A definition of innovation used in the Procurement Directive is "the implementation of a new or substantially improved good, service or process". (Article 2.1.22 of the Procurement Directive) or something that simply isn't on the market. The innovation partnership can be done in several stages and you choose the supplier or supplier that can go ahead and develop the service or product step by step. Compensation shall of course be paid for the work carried out by the participants in the partnership and they shall have a separate research or development capacity. Innovation partnerships have been tested to develop furniture that could not be found on the market and the designers' competence was an important factor in the selection of partnership participants. Innovation partnerships could, for example, also be used to develop type houses or building systems.

Step-by-step innovation partnerships

The conditions for the procedure to be used are that the goods (service or contract) are not on the market. It is the authority that makes this assessment. Innovation is therefore needed to meet the needs of the contracting authority. One definition of innovation used in the PROCUREMENT Directive by the EU is that "the implementation of a new or substantially improved good, service or process". (Article 2.1.22 of the Procurement Directive). This definition is also used by the Commission in other contexts.

In the procurement documents, you should describe how you have reasoned and investigated when you have decided that what you need is not on the market.

It is possible for the contracting authority to cancel the procurement if the requested product suddenly appears on the market during the procurement – in this case it must be stated in the procurement documents and from the contracts with the tenderers.

An authority may pre-announce planned procurements.

In order to interest suppliers who are believed to be able to achieve the objectives of the procurement and have a smooth process, it is just as important to do the procurement according to the rules that exist in the law as to create trust in the industry for the procurement. Important confidence-building measures are that the assessment of tenders and proposals makes competent and serious, that there is a reasonableness in the remuneration made during the

partnership itself, and that respect is shown for the intangible values created during the process, i.e. that the contracting authorities, for example, usurp rights that they will not have use of.

It is also important that the prospective suppliers can get an idea of how large the delivery can be. It is also important for the contracting authority so that it can really buy all the products they need when the partnership is concluded.

1. Selection of participants in the Innovation Partnership

The selection of those who will be part of the innovation partnership is made through a regular invitation to tender. This invitation to tender is terminated after the selection of suppliers to the Innovation Partnership with an award decision. For the innovation partnership itself, contracts are signed with those who will participate in the partnership.

The advertisement for an innovation partnership must state:

1. the need for a good, service or works which the Authority is unable to meet through solutions available on the market,
2. the parts of the description which are minimum requirements to be met by all tenders – it is important that there are criteria assessing the research and development capacity,
- and
- 3.

The procurement procedure provided for in the LOU to select those to be part of the partnership is a negotiated procedure with previous advertising. The starting point for such a procedure is to negotiate the improvement of tenders in the process. The contracting authority may award contracts (to participate in the Innovation Partnership) in this procedure if the advertisement for the procurement reserves that right (Chapter 6, Section 8). What may be reasonable to negotiate are the terms of the innovation partnership, i.e., the process step by step, remuneration and rights to the innovations developed under the Innovation Partnership.

One should describe in a general way the process of the partnership itself, e.g. how many people you intend to invite from the beginning, that you will gradually opt out of suppliers, etc.

Special requirements for suppliers/bidders

There is a special requirement for suppliers to participate in an innovation partnership. They shall conduct separate research and development activities. The requirements for development activities are that it should be carried out separately but should be done in close proximity to production. It is clear from

the preparatory work for the law that these requirements can be interpreted quite generously so as not to restrict competition. It is an important starting point of the directive not to restrict competition and to enable SMEs to participate in as many procurements as possible. There is also no requirement for the supplier to have a separate development and research activity before the Innovation Partnership.

The capacity of the supplier to develop and produce the required product should be assessed in the tendering procedure.

It is also important to be able to assess the supplier's capacity to design a product that has a high level of work. This is not a question of technical capacity that is controlled in the qualification requirements (that the supplier has reached a certain defined level) but the skills and competences to be determined in the selection criteria.

Since this is a development process, you should/cannot be too precise when it comes to how to describe the need and requirements for the product to be developed in the procurement documents. It is also important to be precise with what is necessary and more open about what can be developed in the process. If you are too tight at the beginning and perhaps even ease the requirements during the process, suppliers who chose not to apply to be part of the partnership may question the contract signing because they could not deliver to more tight requirements and therefore refrained from participating.

Allocation basis

The only basis for evaluating tenders for an innovation partnership is the best price-quality ratio. The price is immaterial because the payments paid in the partnership are the same for everyone and presented in the procurement documentation. On the other hand, the procurement may want to create an idea of the suppliers' ability to produce products within reasonable cost frameworks.

The procurement procedure itself is therefore terminated by the award of contracts for the partnership. Then the actual development process begins, which aims to ultimately produce the commodity.

2. Innovation Partnership

For the innovation partnership itself, contact is established with each of the suppliers. The contract shall describe the process and the terms and conditions of the partnership.

Number of suppliers and exclusion process.

The partnership can develop the product gradually and exclude suppliers gradually. How this will be done will be stated in the contract. An important factor is to be clear about how the selection will be made. In order to gain confidence in the process, a named assessment group is recommended, even if it does not say that you need one in the law – the suppliers can then be sure that the assessments are made professionally. The assessment team can of course attract different experts and reference groups – this can also be described in the contract.

You can divide the process into several stages and choose to sort out suppliers step by step. It must be stated in the contract how this process should be done and how the suppliers are paid at the different stages.

They should also be paid equally – i.e. step by step. You pay for "what it costs" to do the development work. Although there should be a certain amount of interest in acquisition if you have the prospect of producing the product after the partnership and if you can also keep the rights to the product even if you are not allowed to produce it, the suppliers should be paid fairly.

Suppliers should present their proposals to the assessment team and receive written feedback from the group after each presentation. It is important that all suppliers are treated equally and that corresponding questions are asked to each and them. The questions can be formulated programming at each step and in the presentations the assessment team should ensure that they get answers to all their questions. Since allocation takes place before the start of the partnership, the development process can be classified. It is important that confidentiality is observed in the sense that the different suppliers do not see each other's proposals during the process and that it is not clear from the feedbacks they receive that the assessment team would like to see a specific solution that one of the suppliers has come up with.

Intellectual property rights

It is important to be clear about intellectual property rights. Should the contracting authority allow those who develop products during the partnership but are not contracted for production to retain their rights to produce the product for another market? This will probably make it more attractive to participate in the partnership.

It is important to protect the process from a supplier's intrusion into the rights of another supplier or designer. The contract should state that suppliers must take responsibility for not infringing such infringements.

The contracting authority can probably agree with the participants on the right to publish the result in the form of drawings or so when the partnership is concluded. It is important that such publication protects the supplier from plagiarism.

KONCEPT

Assessing an architect's competence in procurements according to LOU

Many contracting authorities find it difficult to identify the competence and capabilities of an architect or an architectural office for a specific assignment. Sometimes the contracting authority also wants to contract a group of consultants or a team with different competences for a mission.

It is common to limit the procurement to those suppliers who have already done similar assignments and are not looking for dem that can actually add new values to a project. The contracting authority should form an opinion on how the consultant will approach the task in question.

It is quite obvious that one cannot give an assessment of which architect can provide the best solution precisely to the problem in question by looking only at purely formal capacities such as financial position, number of employees with different competences, etc. Looking at experience and CV can provide some additional guidance, not even the reference taking can only confirm previous experience.

There are limited possibilities, and it is not recommended, to ask the tenderers to provide solutions to the task in the tenders. It is not 'proportionate' to ask tenderers to provide part of the service to be procured in the tender itself. In this case, proportionate means that tenderers may devote more resources than is necessary to select tenderers in the procurement itself. The job should be developed in the mission itself.

Nevertheless, it is relevant and justified that the contracting authority wishes to find out and evaluate how the different tenderers will take on the task of the procurement. The procurer wants to know how the architects will work with the task, if they understand the objectives and challenges of the contracting authority, what values they are deemed to be able to bring to the project. It is not always interesting that an architectural office has already designed ten bathhouses if they have not done well. Or that the architectural office has endless experience of traditional nursing homes if the contracting authority is interested in new solutions for housing for the elderly.

It is therefore about assessing abilities such as creativity, empathy and understanding. It's also more about assessing the potential of architects going forward, not just their past experiences.

Qualification and selection

It is important to distinguish between qualification and selection in a procurement. The qualification is about the requirements that are set for the tenderers to be assessed in the procurement at all. The selection is about the criteria to be set and what documentation the authority can request to make assessments against the selection criteria.

Qualification

The qualification is about making demands on professional and technical capacity that are necessary to complete the assignment at all. As a rule, the qualification requirements concern measurable and technical requirements such as turnover, training, registration, etc. The qualification requirements are a minimum level/limit that must be met for the architect to be eligible for the assignment - no evaluation may be made - either the prospective tenderer meets the requirements or does not meet the requirements.

An important question of control is whether the qualification requirements are so high as to limit competition – a cornerstone of public procurement. It is also necessary that the conditions laid down are the most adequate.

It is common for the contracting authority to request reference assignments for the architect to show experience in certain works. Reference projects can be used for the qualification, but only to establish that the tenderer has done a certain type of assignment, not to assess the quality of the work. References in the qualification phase can thus only be used to establish that a consultant has done a certain type of assignment not to assess how well the work has been done.

In the qualification, it can be required that the architect has a certain type of competence, in the qualification it may be relevant to make demands on a certain level of education or profession.

Inserts:

Requirements for training and or professional experience can be set in the qualification.

Proof that architects have a university degree and two years of professional experience in each profession area can be made up of one of The Architects of Sweden's professional titles:

Architect SAR/MSA

Architect SIR/MSA

Landscape Architect LAR/MSA

Planning Architect FPR/MSA

An architect can of course prove equivalent competence in other ways, such as diplomas and certificates of service, for example, you cannot limit competition for international architects with equivalent competence by setting absolute requirements for a professional title that only members of Sveriges Arkitekter can use.

Selection

The contracting authority would like to assess that the consultant's ability to understand and respond to the specific requirements and wishes of the authority for this project, which means that it will be to effectively develop solutions that meet requirements for function, sustainability, budget, design, etc.

It is possible to set any criteria and it is possible to make assessments. The important thing is that the assessment is made in the way that is written in the procurement documentation, that all tenders are assessed in the same way and that the assessments can be justified.

Approach and method

There are several ways for contracting authorities to assess how the approach and methodology of the tenderers will work in relation to the visions and objectives of the contracting authority. It is common to ask for descriptions of the project organization. In order to make a deeper assessment that is project-specific, the contracting authority may request the tenderer to answer a number of questions in a limited format. The purpose of these questions may be to create a picture of the architect's understanding of the project challenges and for assessment whether the architect has the competence to solve the challenges.

For example, an authority that is going to do an urban transformation project in an industrial environment may ask questions about what the most important success factors are for a successful urban transformation and what resource and experience these architects have to contribute to such a process.

The answers may be requested in writing in the tender or submitted during an interview. If you request written answers, it is important to limit the scope for the answers, both so that all answers are comparable and so that the assessment work does not become too onerous. In interviews, all tenderers should be

treated as the same way, for example through prepared questions and answers should be documented.

The selection criterion linked to these answers should be about the architect's ability to understand and solve the project's visions and objectives.

Understanding and empathy

In much the same way as for approach and method, the authority can assess the tenderers' ability to understand and experience the task. For example, it can be an account of the three main challenges of the project – i.e. the factors that the tenderer ~~needs~~ to devote the most effort to the project. It often turns out that the answers to these questions give a clear picture of the consultant's insights into the challenges of the assignment.

Ability to cooperate

For a contracting authority, it is of course important to form an idea of the conditions for good cooperation with a consultant. If a collaboration works well, there are good conditions for the result of the assignment to be good. This is a purely business position in relation to the consultant. Here the contracting authority must form an opinion and make an assessment. It is almost only possible to make such an assessment by interviewing those tenderers who are deemed to be able to achieve the set criteria

Previous experience

If you want to assess the tenderer's previous experience, it may be good to ask for reference projects. By asking for referential projects that are "relevant" to the assignment but perhaps not necessarily of the same kind, it opens up for a broader palette of previous experiences. It is not always obvious for the contracting authority to understand the relevance of the reference assignments submitted. One way to increase understanding is to ask the architects in the tender for a description to describe why the prospective bidders consider the reference project to be relevant.

For example, a swimming pool, the architects can then submit a description for a commission to construct an airport project on the grounds that the complexity of logistics, security zones, etc. is of a similar nature in the two project types.

In this way, the contracting authority increases competition and has the opportunity to find architects who can add new values to the project.

Price

It would be strange if a publicly funded agency did not take too much interest in a service that is procured will cost. The question is what weight to put on the price when choosing an architect. If a procurement procedure has not been chosen where the opportunity to negotiate the price has been acquired, the cost of the service should in some way be included as a factor in the procurement. However, the Authority must ask itself how decisive the price should be for the evaluation. Often hourly rates are evaluated – but it says nothing about how many hours a consultant needs to solve a task or what value the consultant adds to the project. If an architect can achieve a solution with a low life cycle cost for the project to be built, it certainly pays the entire total consulting fee and more quite quickly. To avoid the price being decisive, it is sometimes traded up on fixed hourly rates – it can be good enough if they are at a market level. The important thing to think about is to formulate selection models that prevent the bidders from being able to "price in" with too low hourly rates.

In a procurement, the basis for the assessment must be "the best relationship between price and quality", which means that you should set the price of the service against the quality you are judged to be able to get. Just like you do when you shop everyday when you think you can pay more for an item that lasts a little longer or works a little better. In everyday life, assessments are also made as to whether the price is reasonable for the quality offered. This means that a low price is not always the best price. We therefore believe that it should be perfectly possible to evaluate whether a price is reasonable in relation to the skills offered in an evaluation model for public procurement. For example, by first evaluating which bidders have the best offer and then assessing whether the price offered is reasonable in relation to quality, a wise choice should be made. This, of course, requires the contracting authority to be clear that the selection will be made in this way and that the choice is based on a knowledge of the market.

Examples of assessable criteria as a starting point but which must be made project-specific:

The selection will be based on an overall assessment based on the material provided regarding the tenderer's experience, resources and competence. The submitted material will be assessed on the basis of the following criteria:

- Ability to design innovative, functional and feasible solutions with high architectural quality.

-
- Experience of relevant projects and insight/understanding of project challenges for the task
 - Competence to comply with applicable standards and regulations.
 - Experience of sustainable construction in the field
 - Ability to carry out the mission; or Ability to carry out project-proof implementation in terms of resources for design, timekeeping and cost monitoring
 - Reasonable cost in relation to the complexity of the assignment and the services offered (*for example, it is not good with either too high or too low prices or it is good with a high price because the consultant has an exceptional competence*)
-

The examples of evaluation criteria we show here are generally described and not directly useful in a procurement, they are intended as starting points. In each individual procurement, it is necessary to clarify what is meant by the different criteria and the tenderers must understand how they will be evaluated. In different projects, certain criteria will be of greater importance and this must also be stated in the procurement documentation. These criteria are also not computable, but they are highly assessable! It is absolutely possible to make assessments in public procurement. In this example, an assessment is also made of whether the cost is reasonable in relation to the quality offered – nothing strange about it – we all do in everyday life, even when we buy something as trivial as bananas or jeans.

When a selection is made based on assessable criteria, it is important that the bidders have confidence in the selection. In order to secure this trust, it is important that the group that makes the selection has adequate competence, it is good if someone or some in the selection group have the same skills as those to be selected. If you do not have this competence within your own organization, it is good to get it from outside. The bidders also want a justification for the elections that they can respect. A bidder knows that you can't win all the procurements, but if you get a good answer as to why you were not selected and you can understand the choice, you have hopefully learned something for the next procurement.

Score skills – behind each figure there is an assessment.

It is common to evaluate competence and experience by giving grades. It is, of course, a method that provides for the contracting authority a clear picture of how different characteristics have been valued and opportunities to weight different criteria against each other in a mathematical way. But at the same

time, it can be difficult to communicate how the evaluation has been done when telling the bidders how to make the selection. As a bidder, you want to know why the competitor got the highest rating and not me. Because behind each figure, the contracting authority has made an assessment. It can be good to put into words why an assessment has been made in a certain way in relation to what you have seen in the tender both for the assessment work and in the communication with the tenderers. It also ensures that the assessment is made in a careful manner and makes the assessment more transparent.

Reference taking

Reference taking is a way of verifying the credibility of the claims made in a tender. It is important to bear in mind that it is not the rapporteurs who should make the assessment of whether the tenderers are suitable for the specific assignment. If referents are asked to rate the consultant's different abilities, without the contracting authority making its own assessment, there is no equal treatment of the tenderers. Different people value criteria such as collaborative skills in different ways. For a person, "conciliatoryness" can be examples of good collaborative skills for others, "creative questioning" is an example of a good climate of cooperation. An answer to such a question thus does not say how the contracting authority and the consultant will cooperate in the project in question. In addition, one can discuss the value of referees rating – they are generally sympathetic to the bidders. Referrers shall primarily be used to verify the claims made by the tenderers in the tenders and possibly to confirm or nuance the contracting authority's own assessment.

Interviews

There are competences and personal qualities of a consultant that can't really be judged if you don't meet. An interview may be justified by the fact that the contracting authority sees that the assignment involves close cooperation between the consultant and the contracting authority. The contracting authority may want to be able to assess such things as collaborative skills, ability to see the whole of the project, analytical ability or strategic ability.

It is of course important to consider the principle of equal treatment and transparency when using interviews in the evaluation work.

Preparation through a list of questions, planning so that everyone has equal time and that the entire assessment group is present is of course important and that the conversations are documented.

It is important that the interviews lead to an assessment of how the bidders are different. Asking about the tender documentation and asking for clarifications may provide some guidance, but examining the tenderer's analysis and positions on different situations that may arise within the assignment can provide more information about the tenderers' competence.

Example: Anna can describe it better.

KONCEPT

Framework agreements

Most contracting authorities have framework agreements for services they know they will almost always need, architects that take care of standard contracts and investigations and which can be quickly available either through simple call-offs or renewed competition.

Different procurement procedures can be used to select suppliers for a framework agreement and it is possible to have one supplier in the contract or several. Since the framework agreements can be valid for up to four years and cover rather large sums, it is important to consider the needs at an early stage and how do the services covered by the framework agreement want to be used. Is it wise to have very many suppliers within a framework agreement, should all suppliers know all assignments that may be considered during the contract period or should there be consultants with slightly different profiles for different types of assignments within the framework agreement? It is also important to decide how the call-offs should be made from the agreement.

It may be useful to make a limitation of the framework agreement so that the contracting authority has the opportunity to make a new procurement if a situation or assignment arises during the framework agreement period that could not be foreseen. For example, the contracting authority may need a specialist service that is not within the framework agreement or a project or question arises when, for example, it is considered that a project competition or other procurement procedure would be a more appropriate method.

There are different possibilities to call off from a framework agreement. It has been common to use some type of ranking system where the person at the top of the list is always asked first, or systems where you try to allocate the assignments according to a distribution key. It can work if most projects that are called off are about the same.

It may often be more appropriate to call off projects through a renewed competitive tendering process. These call-offs set specific selection criteria (which, however, must not be the same as for the framework agreement itself). For architectural services, it may be specific competence or

Dynamic purchasing system

DIS is a system where suppliers can qualify in advance. This means that the contracting authority sets the requirements they impose on its suppliers, such as economic strength and technical capacity. The list is open for vendors to join

underhand. Each time the contracting authority needs to call off services, it may ask affiliated suppliers to submit tenders. There is no requirement for those who are affiliated to the system to submit tenders.

KONCEPT

ABK 09

ABK 09 is the industry's common standard agreement based on extensive joint negotiations and has been anchored by the principals of the Construction Contract Committee, (BKK). ABK 09 therefore reasonably take advantage of the interests of both consultants and clients. Sweden's municipalities and regions are one of the members of BKK and have represented the interests of the municipal clients when signing the standard agreement. The aim has been to design the regulations in a way that, from an overall industry perspective, meets the interests of both the client and the consultant when carrying out consultancy assignments in architectural and engineering activities. ABK 09 is based on a reasonable balance between rights and obligations aimed at an economically optimal risk distribution between the parties and regulates, among other things, the consultant's responsibility – to the rest of the industry's insurers have adapted the basic scope of the consulting liability insurance.

Deviation from the standard contract often means an increased risk for the consultant and difficulty in taking out an insurance policy. Sometimes architects even refrain from sending tenders or expressions of interest to procurements containing unjustified deviations from ABK 09, which in turn restricts competition and in the long run may mean that the contracting authority misses out on the 'best' tender.

The question is whether it is even necessary to deviate from ABK09 in order to achieve the client's purposes? Here are some arguments about the most common deviations regarding responsibility and the client's right to the assignment result.

Responsibility

As a rule, there is no basis for extending insurance coverage in terms of architects' liability. Other consulting groups, such as designers, have a completely different risk picture. Deviation from the liability provisions in ABK 09 means that the architect is not fully insured regarding the consulting responsibility.

As mentioned, the liability provisions in ABK 09 are in line with insurers, which means that insurers have approved the relevant liability conditions and confirmed that they comply with the conditions set by the insurer for insurance compensation to be paid if the consultant causes damage in the performance of an assignment.

If a contracting authority imposes requirements for increased liability and it is a framework agreement where the assignments that are supposed to be called off during the contract period are not yet known, it is impossible for insurers to price the insurance and for a supplier to form an opinion on the cost of the premium and it is also unclear whether it is even possible to insure such an increased liability. If the contracting authority wishes to have an increased insurance cover in relation to ABK 09, the cost should, if such protection is possible to insure, be borne by the customer.

Right to the assignment result

According to ABK 09, the client has the right to use and copy the assignment result for the purpose intended by the assignment. This means that if the assignment is about the basis for a detailed plan, the client can use the assignment result for just that. The likelihood that such a mission result could be used in any other context is very small. For example, if the contracting authority wishes to make changes in relation to the architect's design or to be able to rebuild without the permission of the architect, it is in principle also possible, although it may be unwise to change something during design without checking the consequences with the architect. In most cases, therefore, there is no need to extend the rights to the mission results. Therefore, there is no justification for a contracting authority to grant itself the right to freely use or own all materials and results of the work that emerge from the performance of the assignment. If the purpose of the assignment is properly stated in the contract, it is enough in the vast majority of cases.

In some cases, the client also requires the right to use all the data files from which the documents were produced. As a rule, the architects' internal work files also contain company-specific information prepared individually at the architectural office and irrelevant to the assignment in question. The contracting authority should therefore avoid imposing unjustified conditions requiring access to the work files of architects and other internal material.

It is possible that conditions are laid down that work results drawn up by the architect may not be used by the architect without the permission of the client. In most cases, it is unreasonable to limit the architect's right to use the material, partly because in the architectural industry it is customary for the architect's professional skills to be reported through references of completed projects. Each project an architect does forms part of the overall competence that the architect acquires and solutions or parts of solutions are often used or adapted to new projects. They then get new contexts and in a new context become part of another solution. In the case of a classified project or for other reasons

confidential material, it may be acceptable to limit the architect's right, but then the restrictions are justified and specified.

KONCEPT

Support in procurement

Swedish Architects can act as support to contracting authorities in different types of procurements. Sweden's Architects can be a support in all types of procurements. Depending on the needs of the contracting authority, we can adapt our services from overall advice and sounding board to help with planning the different stages of the procurement and provide support in selection processes.

When it comes to project competitions, we have unique experience and a well-developed service that means that we can accompany through the entire process from program writing to jury decisions.

Swedish Architects are happy to participate in development projects if, for example, a contracting company wants to try a procurement procedure where there is not yet a practice. Our knowledge of the architectural industry helps us to assess the reasonableness and consistency of different ways of making a procurement.

More support

The Procurement Authority and SKR have good information on many issues that may arise in procurement situations.

Literature

Literature and other things you can read in

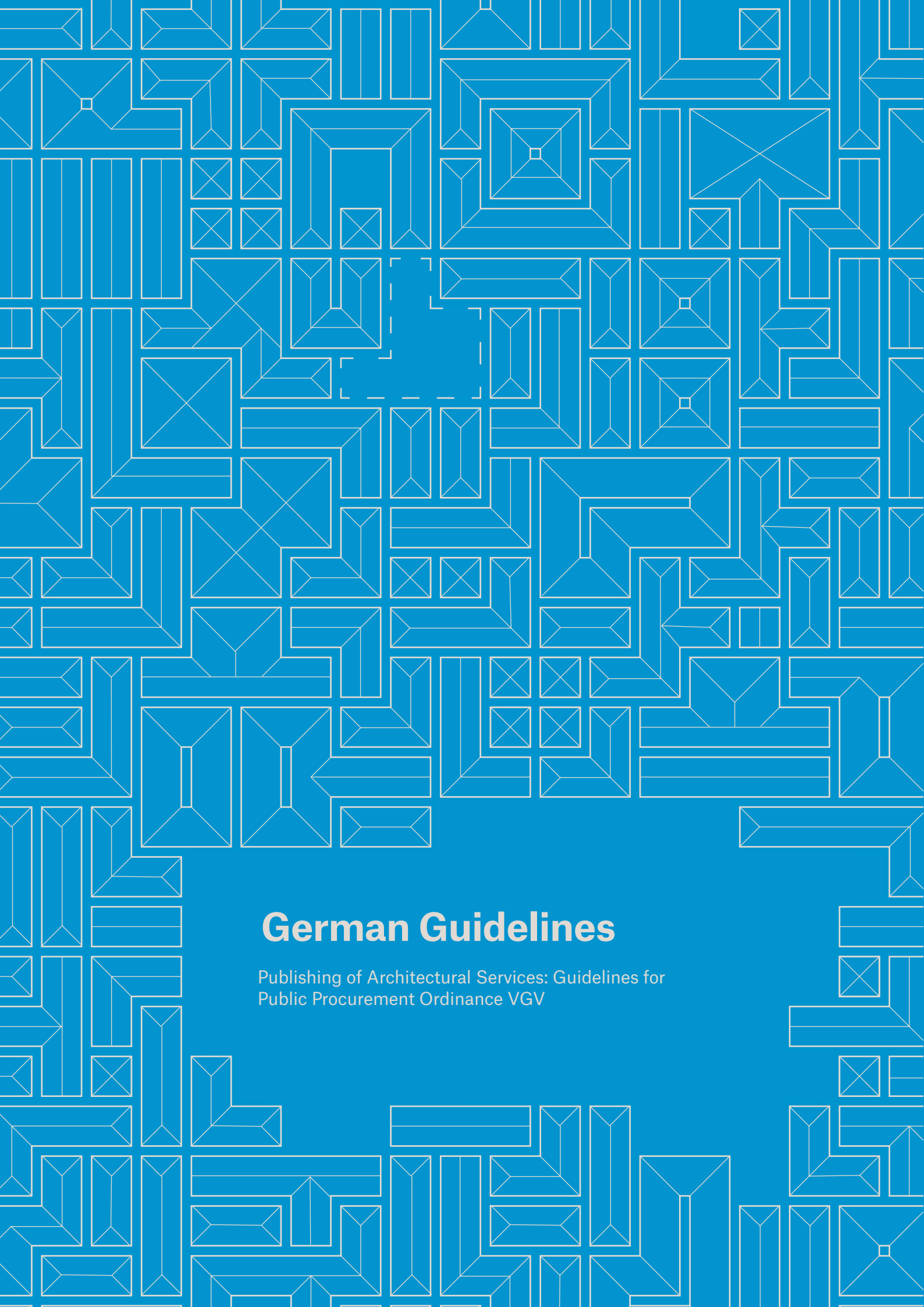
Building beautifully

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LOU

Procurement strategy

Directive



German Guidelines

Publishing of Architectural Services: Guidelines for
Public Procurement Ordinance VGV

**PUBLISHING
OF ARCHITECTURAL
SERVICES.**

**GUIDELINES FOR
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Publisher

Federal Chamber of Architects BAK

Association of German Architects BDA

Association of German Master Builders, Architects and Engineers BDB

Association of German Interior Architects BDIA

Association of German Landscape Architects bdla

Verband Deutscher Architekten- und Ingenieurvereine DAI

Vereinigung für Stadt-, Regional- und Landesplanung SRL

Vereinigung freelance architects of Germany VfA

Committee of the Associations and Chambers of Engineers and Architects for the AHO Fee Structure

WHOEVER BUILDS IS RESPONSIBLE FOR BUILDING CULTURE

Joint foreword by the municipal umbrella organisations and the publishers

The 2016 comprehensive reform of the Regulation on the Award of Public Contracts (Vergabeverordnung, VgV) has opened up a great opportunity for the award of architectural services to carry out award procedures efficiently, to give greater weight to the quality of the service when awarding contracts and to facilitate access to public contracts for small and medium-sized companies.

The motivation for this guideline is the shared responsibility of public clients and architects for high-quality construction in cities, districts and municipalities.

Every building project is an investment in our future living spaces. The energy transition to be achieved, the necessary education offensive or the creation of good and affordable living space are, in essence, tasks that are placed on architecture and urban development. If we want to develop viable solutions for these tasks, we need sustainable ideas, creativity and efficiency. Only then will we be able to think ahead and develop our cities, districts and municipalities to meet the demands of tomorrow. This applies equally to growing and shrinking municipalities.

The central prerequisite for this is that local authorities practise a good planning and building culture in their political, planning and construction activities. A planning and building culture that is perceived responsibly by citizens aims to achieve a high quality of the built environment and the associated procedures and processes. Only a good process creates the necessary conditions for the realisation of buildings that impress with their quality.

The signatories therefore advocate and campaign for public clients and architects to jointly assume their responsibility for the planning and realisation of construction projects. This process already begins with the award procedure - i.e. with the public client's search for the best solution.

solution for an upcoming construction task and, at the same time, a suitable partner for the client. With this in mind, the guidelines for the awarding of architectural services offer practical recommendations and principles for carrying out qualified award procedures.

Lord Mayor Markus Lewe

President of the Association of German Cities

District Administrator Reinhard Sager

President Deutscher Landkreistag DLT

Mayor Ralph Spiegler

President of the German Association of Towns and Municipalities DStGB

Andrea Gebhard

President of the Federal Chamber of Architects BAK

Susanne Wartzeck

President of the Association of German Architects BDA

Christoph Schild

President of the Association of German Master Builders, Architects and Engineers BDB

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TABLE OF CONTENTS

KEY POINTS OF QUALIFIED AND LEGALLY COMPLIANT PROCUREMENT PROCEDURES 8	8
1. PREREQUISITES FOR THE SUCCESS OF PLANNING AND CONSTRUCTION PROJECTS	11
2. PRINCIPLES OF THE AWARD PROCEDURES	16
3. ESTIMATION OF THE CONTRACT VALUE: AWARD ABOVE OR BELOW THE THRESHOLD VALUE	18
4. TYPES OF PROCEDURE IN THE PUBLIC PROCUREMENT ORDINANCE VGV	21
4.1. Negotiated procedure.....	21
4.2. Competitive dialogue	23
4.3. Evaluation of award procedures for qualified selection and commissioning	24
4.4. Excursus: Concept award	26
5. ORGANISATION OF NEGOTIATION PROCEDURES	28
5.1. Simple procedures	28
5.2. Appropriate suitability criteria.....	29
5.3. Participation of smaller office organisations and young professionals	31
5.4. Evaluation of the offers.....	31
6. NEGOTIATION PROCEDURE WITH UPSTREAM PLANNING COMPETITION	32
6.1. Types of planning competition	32
6.2. Procedure: Negotiated procedure with prior - open or restricted - design competition .	33
7. NEGOTIATED PROCEDURE WITHOUT UPSTREAM PLANNING COMPETITION	39
8. GENERAL BUILDING BLOCKS OF NEGOTIATION PROCEDURES AND PLANNING COMPETITIONS	44
8.1. Contracting authority	44
8.2. Competition and contract notice	45
8.3. Applicants - Participants - Bidders	46

8.4. Competitive tender	46
8.5. Reasons for exclusion	48
8.6. Selection criteria in the restricted design competition.....	48
8.7. Suitability criteria	49
8.8. Suitability loan.....	58
8.9. Subcontracts.....	58
8.10. Candidate and bidding consortia	59
8.11. Jury.....	59
8.12. Assessment criteria	60
8.13. Order negotiation	60
8.14. Award criteria	61
GOOD EXAMPLES OF PLANNING COMPETITIONS	71

KEY POINTS OF QUALIFIED AND LEGALLY COMPLIANT PROCUREMENT PROCEDURES

By organising the award procedure, the [contracting authority](#) decides on the quality of the planning process and the quality of the construction project. The guideline formulates practical recommendations for the qualified and legally compliant award of architectural services¹. Qualified and legally compliant award procedures can reduce the risk of complaints and review procedures as well as the associated time and economic risks for project realisation.

see p. 44

The key points of qualified and legally compliant procurement procedures are as follows:

Foundations for successful planning and construction projects

Chapter 1

The basics include

- Task-specific, structured and substantiated project and process preparation
- Upstream participation of citizens in public and socially relevant projects
- Selection of a qualified award procedure that leads to the commissioning of the best planning and the most suitable planners

Legal principles for award procedures

Chapter 2

The principles of procurement law defined by the Act against Restraints of Competition are binding for legally compliant procurement procedures:

- **Principle of competition:** competitive tendering as a fundamental principle of contract award must not be restricted by unlawful or inappropriate requirements (Section 97 (1) GWB)
- **Economic efficiency requirement:** Architectural services are awarded on the basis of competition on merit (Section 76 (1) VgV); pure price competition is excluded
- **Proportionality:** selected requirements and criteria in the award procedure are both appropriate and necessary (Section 97 (1) GWB)
- **Transparency requirement:** award procedures must be carried out transparently (Section 97 (1) GWB); the contracting authorities have a comprehensive duty to provide information to bidders
- **Prohibition of discrimination:** Participants in procurement procedures must always be treated equally (Section 97 (2) GWB)

¹ "Architectural services" is the term used in the VgV and includes the services of architects, interior and landscape architects and urban planners.

- **Consideration of SMEs' interests:** SMEs' interests must be given priority by the contracting authority when awarding public contracts (Section 97 (4) GWB)

Estimation of the order value

Chapter 3

Depending on the estimate of the contract value, the contract is awarded above or below the threshold value. The following points must be observed for the estimate:

- Determination of the costs relevant to the order value
- The HOAI fee tables form a recognised, non-binding basis for estimating the contract value; the respective fee zone and ancillary costs are to be determined on the basis of empirical values
- The contract value is to be determined separately for dissimilar areas of activity, i.e. individual contracts or staged commissions in a property or specialist planning are to be added together, but not the different property and specialist planning.
- Relevant date: dispatch of the contract notice or initiation of the award procedure by other means

Selection of suitable process types

The choice of the appropriate type of procedure is made with regard to the construction task and should pursue the goal of commissioning the best planning and the most suitable partner.

The Public Procurement Ordinance designates the **negotiated procedure** and the **competitive dialogue** as equal types of procedure for the award of planning services.

Explanation and evaluation of the procedures: Chapter 4

Negotiated procedures can be carried out in two forms:

Negotiated procedure with upstream planning competition

- A spectrum of proposed solutions is developed in the technical performance comparison, from which a jury selects the best solution concept on the basis of objective technical criteria.
- Negotiated procedures preceded by planning competitions ensure that the best solution to the planning task is selected and are also a suitable instrument for ensuring planning quality and promoting building culture (Section 78 (1) VgV).
- For tasks in building, urban and bridge construction as well as landscape and open space planning, the contracting authority must check whether a design competition should be held and must document the decision (Section 78 (2) VgV).

Procedure: Chapter 6

Negotiated procedure without upstream planning competition

Procedure: Chapter 7

- The award is based on past performance (references) and performance-, personnel- or project-related statements.
- It is also possible to commission at least three bidders to propose solutions (Section 51 (2) and (3) VgV); these services are to be remunerated appropriately, with the HOAI serving as a guide.

The **competitive dialogue** is only suitable for awarding architectural services to a limited extent due to the complex and time-consuming procedures under public procurement law.

Requirements for legally compliant negotiation procedures (selection)

Chapter 5

For a qualified and legally compliant award, it is advisable to conduct the negotiation procedures according to the principle of "less is more". In addition, this results in a bureaucratic and economic reduction in the burden of proof on applicants as well as on the awarding authority when checking and documenting the evidence.

- Suitability criteria must be related to and proportionate to the subject matter of the contract (Section 122 (4) GWB, Section 75 (4) VgV); excessive suitability criteria or minimum requirements are therefore inadmissible.
- Suitability criteria are to be selected for suitable tasks in such a way that smaller office organisations and young professionals can participate (Section 75 (4) VgV)
- Reference projects are deemed to be comparable if they are similar in type and scope to the tendered planning service; the fee zones provide an indication of this.
- Reference projects need not correspond to the type of utilisation of the project to be planned.
- The period since the completion of reference projects can be more than three years (Section 46 (3) No. 1 VgV); ten years is recommended due to the long-term nature of construction projects.

The guide is not a legal commentary on the Public Procurement Ordinance. Expert advice should therefore be sought in the event of legal doubts and ambiguities in individual cases.

1. PREREQUISITES FOR THE SUCCESS OF PLANNING AND CONSTRUCTION PROJECTS

Good planning prevents undesirable developments and ensures the long-term success of the planning and construction project. Good planning begins with solid project preparation, actively involves citizens in the preparation and planning process and relies on award procedures that select the planning to be commissioned based on quality criteria.

Solid project and process preparation

Careful, comprehensive and well-coordinated project preparation with all parties involved is the basic prerequisite for the success of a planning and construction project. The aim is to develop a robust concept for the construction project. Good project preparation is an essential prerequisite for architects to be able to prepare an accurate tender during the tendering process.

If the client's specifications are not precisely determined in advance of the planning stage, planning errors are inevitable, which can only be corrected later at high planning and construction costs. Careful project preparation with the appropriate use of expertise, finances and time therefore ensures the quality and cost-effectiveness of the planning, the investment and also the subsequent utilisation.

Accordingly, it has proven to be a good idea to clarify the construction task in detail and formulate it precisely before awarding the planning services. In this phase (also known as "phase zero"), it is essential to define the objectives and requirements that the project must fulfil (needs analysis). Furthermore, the existing building and the requirements for the site must be recorded.

An urban development feasibility study or building mass study (test design) can be used to check whether the project is technically, functionally, structurally, economically and legally feasible at the planned location.

On the basis of these results, the specific terms of reference for the award procedure can be formulated in an interdisciplinary manner and, if possible, with the involvement of all stakeholders (future users, citizens, politicians and administration).

The award procedure must be prepared on this basis.

Figure 1: Project preparation services

A. PROJECT PREPARATION	REQUIRED	IF REQUIRED
1. check need for counselling		
Check the need for external consulting services	•	
Commissioning external consulting services		•
2. carry out a needs analysis		
Requirements for use and function	•	
Inventory analysis		•
Needs assessment > Needs assessment	•	
Location analysis	•	
Room and function programme	•	
Energy concepts		•
Participation process	•	
3. define framework conditions		
Planning law framework	•	
Assessment of the subsoil	•	
Extent and type of building utilisation		•
Neighbourhood law issues		•
Landscape law framework conditions	•	
Traffic development		•
Technical infrastructure		•

Clearance costs		•
Urban planning feasibility study / building mass study		•
4. determine cost framework		
Land acquisition	•	
Construction, development and planning / support	•	
Operation and maintenance	•	
Planning the financing	•	
Check possible funding programmes		•

Fig. 2: Process preparation services

B. PREPARATION OF THE PROCEDURE	REQUIRED	IF REQUIRED
Decision on the need for external procedural support	•	
Selection and commissioning of the Process support		•
Determination of the planning and consulting services to be awarded	•	
Estimation of the contract values of the planning services	•	
Selection of the award procedure (decision on organising a planning competition and documentation; advice on this from the state chambers of architects)	•	
Introduction of the award procedure	•	

Contracting authorities are obliged to make their own decisions in the award procedure. If the contracting authority does not have the necessary knowledge of the services required to prepare the project and procedure, procedure consultants can be commissioned to provide supportive partial services. [see p. 44](#)

If planning competitions are organised, the state chambers of architects are involved in an advisory capacity (Section 2 (4) RPW 2013).

Public participation

Co-creation through citizen participation can improve the quality and acceptance of planning. At the same time, citizen participation increases the transparency of planning and decision-making processes and can open up resources and competences. This poses particular challenges for administrators, politicians and architects.

It is therefore necessary to examine at what point in time participation can make a meaningful contribution to the process and whether the effort involved is proportionate. In addition, the extent of the consultation and decision-making dimensions of the citizens should be pointed out at an early stage in order to avoid false expectations.

Influence in participatory processes is greatest at the beginning of the process and decreases as the process progresses due to the increasing technical complexity.

In general, negotiated procedures with an upstream planning competition are best suited for process-accompanying participation.

In the project preparation phase, the public can contribute fundamental suggestions, which are collected, for example, in the form of discursive formats and integrated into the formulation of the task.

Once the planning competition has been completed, the public will be informed of the results. For this purpose, an exhibition of all the works for information and discussion, possibly with the involvement of the chairman of the jury, is recommended.

When organising planning competitions in two competition stages, i.e. two successive competition procedures (e.g. urban design and object planning), the results of the first stage can be discussed publicly while maintaining anonymity.

In contrast to the planning competition, confidentiality must be maintained during the negotiated procedure and public participation in the decision-making process is not possible (Section 5 VgV). This means that proposed solutions can only be published during and after the conclusion of the procedure with the express consent of the bidders. They cannot be obliged to do so.

Commissioning of the best planning and the most suitable planner

Procurement procedures that search for the best solution and the most suitable partner for the planning and construction task at hand create the conditions for successful planning and construction projects.

The success of a construction project depends on commissioning the best planning and not the first best planning.

Good planning is valuable: An overall planning concept must integrate different professional, constructive and technical aspects, meet legal requirements and standards, leave room for necessary adjustments, take into account the interests of all parties involved and solve the construction tasks with a high level of urban planning and architectural quality, taking economic criteria into account.

2. PRINCIPLES OF THE AWARD PROCEDURES

The general principles of public procurement law characterise the specific design of the award procedures. Among other things, these specifications result in requirements for the type of service description, the selection of participants and the suitability and award criteria.

Competitive principle

Competitive tendering is the fundamental principle and central element of public procurement. Procurement procedures must be organised in such a way that as many different [applicants](#) as possible must be able to participate; at least three applicants must be involved in the tender procedure (Section 51 (2) and (3) VgV). Competition must not be restricted by unlawful or inappropriate requirements (Section 97 (1) GWB).

[see p. 46](#)

Economic efficiency requirement

The contract is awarded to the most economical tender based on the best price-performance ratio (Section 127 GWB, Para. 1, Section 58 Para. 1 and 2 VgV). Architectural services are awarded on a competitive basis (Section 76 (1) VgV). A pure price competition is therefore excluded. In addition to the price or costs, the contracting authority is entitled to apply the [award criteria](#) specified in Section 58 (2) VgV. The main award criterion is the quality of the expected performance (see explanatory memorandum to Section 76 (1) VgV), which is measured in terms of design, functional, constructive, ecological and economic aspects. Organisation², qualification and experience of the personnel entrusted with the execution of the contract as well as the quality assurance measures can serve as award criteria.

[see p. 61](#)

The [contracting authority](#) may also specify fixed prices or fixed costs (fees) so that the most economical tender is determined exclusively on the basis of qualitative award criteria (Section 58 (2) sentence 3 VgV).

[see p. 44](#)

Proportionality

The principle of proportionality requires that the requirements and criteria selected in the award procedure are both appropriate and necessary (Section 97 (1) GWB). For the award of architectural services in accordance with the VgV, this specifically means that the [suitability criteria](#) for assessing the performance of applicants must be related to the subject matter of the contract and be proportionate to it (Section 122 (4) GWB, Section 75 (4) VgV). It is therefore not permissible to specify excessive suitability criteria or minimum requirements.

[see p. 49](#)

² Müller-Wrede: VgV/UVgO including VergStatVO. Commentary, Cologne, 2017, § 76 VgV Rn. 16 ff.

Transparency requirement

Procurement procedures must be carried out transparently (Section 97 (1) GWB). For the contracting authorities, this results in the obligation to provide comprehensive information to [bidders](#), for example on the proof of suitability to be provided, the award criteria and their weighting as well as the contract conditions. [see p. 46](#)

The need for optimisation identified must be presented transparently to the bidders during negotiations.

The requirement for transparency results in the obligation to keep an award notice that documents the steps of the award procedure in a comprehensible manner (Section 8 VgV). Furthermore, this is linked to the obligation to inform unsuccessful candidates and bidders of the reasons for not being considered with a meaningful and comprehensible notification based on the specified criteria (Section 62 VgV, Section 134 GWB).

Prohibition of discrimination

The participants in an award procedure must always be treated equally (Section 97 (2) GWB). This means that favouring individual applicants, participants and bidders is not permitted. This means, among other things, that all applicants, participants and bidders must be aware of the decision-making processes and must be treated equally at all stages of the procedure.

Consideration of SME interests

Contracting authorities are obliged to prioritise the interests of SMEs when awarding public contracts. For this reason, services must be divided up in terms of quantity and awarded separately according to type or specialism, unless economic or technical reasons require a combined award (Section 97 (4) GWB). This means that the combination of different planning disciplines, for example by commissioning a general planner, as well as the combination of construction and planning services in one contract is only permitted in rare and separately justified exceptional cases.

3. ESTIMATION OF THE CONTRACT VALUE: AWARD ABOVE OR BELOW THE THRESHOLD VALUE

In order to carry out procurement procedures correctly, the [contracting authority](#) must determine the value of the contract to be awarded in advance. The estimated contract value is used to decide whether or not a Europe-wide procurement procedure should be carried out. If the contract value reaches or exceeds the threshold value, the VgV must be applied and the contract put out to tender throughout Europe. [see p. 44](#)

The threshold value for planning services has been 215,000 euros (net) since 1 January 2021, and 140,000 euros (net) for contracts from supreme and higher federal authorities.

Included costs

The contract value includes in particular the following costs (excluding VAT) (Section 3 (1) VgV):

- Estimated total fee for the planning service to be awarded (including the commission of previous and subsequent commissions, such as feasibility study, isolated commissioning of construction supervision, etc.).
- Ancillary costs that are defined in more detail in Section 14 HOAI (2021) (e.g. shipping costs, certain travel costs)
- Any options (e.g. level assignment or special services)
- for planning competitions also: bonuses or payments to the participants (prize money, processing fee, etc.)

HOAI (2021) as the basis for calculation

A new HOAI came into force on 1 January 2021, replacing the previous HOAI 2013. The reason for the amendment to the HOAI was the decision of the European Court of Justice (ECJ) of 4 July 2019 (C-377/17), according to which the previous binding nature of the minimum and maximum rates violated European law. With this finding, the Federal Government was obliged to amend the HOAI. To do so, not only the HOAI itself had to be amended, but also the Engineering and Architects' Services Act (ArchLG) on which it is based.

According to the new HOAI (2021), the (unchanged) calculation parameters and fee tables of the HOAI can continue to be used as a basis for determining the contract value for planning services. Fee components that

The costs of services that are not included in the HOAI fee tables (special services, ancillary costs, etc.) are to be estimated on the basis of empirical values.

In its judgement, the ECJ ruled that a binding stipulation of minimum and maximum rates by the legislator is in breach of EU law, but that, in the opinion of the court, minimum rates can in principle be suitable for ensuring the quality of planning services in Germany. In this respect, the ECJ expressly permits the continued validity and application of the HOAI as a non-binding fee recommendation and guide. It can therefore continue to be used to determine the contract value, especially as Section 1 sentence 2 ArchLG stipulates that the legitimate interests of engineers and architects and those obliged to pay must be taken into account when determining the fee tables for determining appropriate fees.

Separate determination of dissimilar areas of activity

The VgV clarifies that only similar services are to be added together for planning services (Section 3 (7) sentence 2 VgV).³ This means that individual contracts for project planning (e.g. the separate award of service phases 1 to 5 and service phases 6 to 9) are to be added together, but not the various specialist plans (structural design, technical equipment) for a construction project.

EU infringement proceedings have currently been initiated against the Federal Republic of Germany, as a result of which it may become necessary to generally total the contract values of the individual planning disciplines. If EU funding, for example ERDF, is utilised, this procedure is recommended as a precautionary measure in order to avoid possible reclaims. If services from different planning areas within a project are to be awarded to a single contractor, the fees must be added together (Section 3 (1) VgV).

Documentation obligation

A breach of the regulation on estimating the contract value can lead to a review of the award by way of legal protection under public procurement law and, in the case of subsidised measures, to the (partial) recovery of grants. The contracting authority must therefore determine the contract value conscientiously and appropriately. The estimate must be objectively comprehensible and must be carried out and documented in accordance with the relevant regulations.

³ Stemmer: Vergaberecht 2016 - Was ist neu?, Stuttgart 2016, p. 47 f.; Stolz: Die Vergabe von Architekten und Ingenieurleistungen nach der Vergaberechtsreform 2016, VergabeR 2016, 351 (353, 354); Matuschak: Determining the contract value of architectural and engineering services under the new public procurement law, NZBau 2016, p. 613 ff.

Relevant date

The relevant date for estimating the contract value is the date on which the notice of intended contract award is sent or the award procedure is initiated in another way (Section 3 (3) VgV).

4. TYPES OF PROCEDURE IN THE PUBLIC PROCUREMENT ORDINANCE VgV

The awarding of architectural services is regulated in a separate section 6 of the VgV, which takes account of their special features and is applied in addition to the general regulations. In connection with the types of procedure, this is reflected in the fact that architectural services are generally awarded in a negotiated procedure with a competitive tender or in a competitive dialogue (Section 74 VgV).

Both types of procedure are to be organised in such a way that architectural services are awarded on a competitive basis (Section 76 (1) sentence 1 VgV). This means that the main [award criterion](#) for this service should be its quality. For this reason, the most important characteristic of these award procedures is the establishment and assessment of quality criteria (see explanatory memorandum to Section 76 (1) VgV).

[see p. 61](#)

4.1. Negotiated procedure

Negotiated procedures are procedures in which the [contracting authority](#) negotiates the terms of the contract with at least 3 bidders following a public invitation to participate and an assessment of the suitability and performance of the candidates (call for competition).

[see p. 44](#)

Negotiated procedures can be carried out **with** (Section 17 (1) VgV) or **without a call for competition** (Section 17 (5) VgV).

[see p. 46](#)

This results in two possible forms of negotiated procedures for the award of architectural services:

1. Negotiated procedures **with** an upstream planning competition take place **without a** competition.
2. Negotiated procedures **without** a prior planning competition take place **with a** participation competition.

For tasks in building, urban and bridge construction as well as landscape and open space planning, the contracting authority must always check whether a planning competition should be held for these and document its decision (Section 78 (2) VgV).

Planning competitions guarantee the selection of the best solution for the planning task and are also a suitable instrument for ensuring planning quality and promoting building culture (Section 78 (1) VgV).

Negotiated procedure with upstream planning competition

The negotiated procedure and the upstream planning competition are two separate procedures to be carried out one after the other.

The planning competition serves to generate solutions and thus to select suitable bidders, but does not lead directly to the commissioning of the architectural services. This only takes place in the subsequent negotiated procedure.

However, the upstream planning competition determines the field of bidders in the negotiation procedure. The winner or all prizewinners are invited to participate in the negotiations (Section 14 (4) No. 8 VgV). The planning competition can be organised as an open or restricted competition. The difference is that in a restricted design competition, the [participants](#) in the design competition are first selected in an evaluation procedure ([competition for participation](#)) on the basis of clear and non-discriminatory [selection criteria](#).⁴

[see p. 46](#)

[see p. 46](#)

[see p. 48](#)

In this guide, the two processes are described in context from a procedural and therefore practical point of view.

Negotiated procedure without upstream planning competition

The negotiated procedure without upstream planning competition generally requires a competition. A previously defined number of [applicants](#) are selected by the contracting authority based on their suitability and performance in the competition. Appropriate [suitability criteria](#) must be specified in the contract notice. The selected applicants are invited to submit an initial offer, which is the subject of the contract negotiations. After receipt and examination of the final bids, the [bidder](#) who is awarded the contract is selected on the basis of the specified [award criteria](#).

[see p. 46](#)

[see p. 49](#)

[see p. 61](#)

[see p. 46](#)

In contrast to the negotiated procedure with upstream planning competition, the award decision here is based on the services provided by the bidders in the past and, in addition, on statements relating to personnel, services and projects. No concrete solution proposals for the construction task at hand are developed and submitted to the client.

In addition, several architects can be commissioned to prepare solution proposals in the negotiated procedure for an appropriate fee (Section 76 (2), § Section 77 (2) VgV). The benchmark for this can and should, especially after the ECJ judgement

⁴ Selection criteria (Section 71 (3) VgV) must be distinguished from the suitability criteria (Section 122 GWB, Sections 42 ff., 75 VgV) (VK Berlin, decision of 12 November 2019, VK - B 2 - 29/19).

of 4 July 2019 will be the new HOAI (2021), which serves as a guide for determining the appropriate fee.⁵

4.2. Competitive dialogue

The competitive dialogue as an award procedure (Section 18 VgV) is suitable for tasks where the contracting authority cannot describe its needs and requirements for the service to be provided or cannot yet assess which technical, financial or legal solutions the market offers (explanatory memorandum to Section 74 VgV).

This situation can arise, for example, in the case of innovative projects, the realisation of large, integrated transport infrastructure projects or projects with complex, structured financing (recital 42 of Directive 2014 / 24 / EU).

In the competitive dialogue, the solutions developed are decided on in stages. The multi-phase dialogue is completed when the contracting authority has identified the solutions that can satisfy the needs and requirements of the service to be procured (Section 18 (7) VgV) - i.e. when the contracting authority has gained an understanding of which services are to be awarded overall. One feature of this procedure is the joint development of project-specific questions and their solution.

⁵ § Section 1 sentence 2 of the German Engineering and Architects' Services Act stipulates that the legitimate interests of engineers and architects and those obliged to pay must be taken into account when determining the fee tables for fee orientation in order to determine appropriate fees. The explanatory memorandum to the law states that the fee tables provide guidance for an appropriate fee level. The explanatory memorandum to Section 2a HOAI (2021) also clarifies that a fee determined on the basis of the HOAI regulations and using the guideline values is appropriate and that the guideline values contribute to ensuring planning quality. For the legal situation prior to the ECJ ruling of 4 July 2019, case no. C-377/17, see BGH, ruling of 19 April 2016, case no. X ZR 77 / 14; Commented in Deutsches Architektenblatt, issue 7 / 2016, p. 45 ff. and see also VK Südbayern, decision of 29.06.2017, ref. Z3-3-3194-1-13-04/17, VK Westfalen, decision of 07.03.2019, ref. VK 1-4/19. Other view: BGH, judgement of 19.04.2016, ref. X ZR 77/14, VK Sachsen, decision of 05.02.2019 ref. 1/SVK/038-18.

4.3. Evaluation of the award procedures for qualified selection and commissioning

Against the background of the success factors for planning and construction projects named in Chapter 1, the various award procedures are assessed below in terms of how they support the selection and commissioning of qualified planning and a qualified architect.

Negotiated procedure with upstream planning competition

In the upstream planning competition, architects develop alternative solutions by comparing professional performance. A qualified jury selects the best solution concept from the widest possible range of proposals on the basis of objective professional criteria - such as economic, functional, technical, ecological and design aspects. This process leads to the selection of an architect with the task of realising the winning concept.

Due to the lead time of the planning competition before the negotiation procedure, the client has the opportunity to prepare the tender documents in parallel to the planning competition and to take into account the findings from the competition procedure. As only the prizewinners have to participate in the negotiation procedure, the effort required to check the [proof of suitability](#) is reduced.

Planning competitions achieve a high level of legitimisation of the award decision, as the best possible planning can be commissioned on the basis of transparent, economically viable and objective criteria.

[see p. 29](#)

Planning competitions also involve politics and administration in the process and can promote the acceptance and realisation of the building project through their participation in the jury. Citizens are comprehensively informed about the planning and construction project through the exhibition of the competition entries.

The argument that negotiated procedures with an upstream planning competition lead to higher costs and longer planning times compared to negotiated procedures without an upstream planning competition must be evaluated in a differentiated manner with regard to the success factors of construction projects: A research project by the Federal Ministry of Construction shows that the initially comparatively higher procedural costs appear more than justified by the higher quality assurance, the more transparent award process and the better involvement of the public. The time required for the planning competition is generally balanced out in the subsequent planning stages, as a jointly developed solution concept is available at the end of the competition.⁶

⁶ Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMUB): Aufwendungen bei der Vergabe von Planungsleistungen. Evaluation of the time processes and monetary expenses in awarding procedures for planning services in building construction, Berlin 2014, p. 74.

Furthermore, planning competitions can contribute to legal certainty, as jury decisions cannot be challenged as long as the formal criteria are met. For example, the invitations to tender for planning competitions are checked in advance by the chambers of architects for conformity with the relevant competition guidelines - usually the guidelines for planning competitions (RPW 2013).

Negotiated procedure without upstream planning competition

In the negotiated procedure without an upstream planning competition, no solution proposals are usually submitted for the construction task at hand; the planning services to be provided in the future can be estimated on the basis of services provided in the past (references) and performance-, personnel- or project-related statements. The quality of the planning services is therefore discussed and decided on the basis of forecasts.⁷

It is also possible to have solution proposals drawn up as part of the negotiated procedure without an upstream planning competition. Their evaluation is part of the [award criteria](#). The quality of the individual contributions must be assessed in a transparent decision-making process based on objective criteria. Although an independent committee with the involvement of professionally qualified consultants to assess the proposed solutions is not mandatory, it is strongly recommended in the interests of acceptance of the award decision.

see p. 61

As the VgV generally requires at least three [bidders](#) to prepare proposed solutions (Section 51 (2) and (3) VgV), this can result in fee claims that can regularly exceed the total prize money of a planning competition. It should be borne in mind that this procedure also incurs costs for the preparation, formulation of the brief, preliminary review and technical support in the evaluation of the proposed solutions.

see p. 46

Public participation during the procedure is excluded.⁸

Competitive dialogue

When awarding contracts for architectural services, the brief and objectives can generally be described. For the vast majority of planning tasks, the competitive dialogue does not appear to be the optimal procedure due to the complexity of this type of procedure itself.

All eligibility and award criteria must be bindingly specified when the procedure is announced, even though the possible solutions have not yet been outlined. Precisely because the outcome of the possible solutions is still largely open, the criteria formulated at the beginning of the procedure in particular can be used as a basis for the selection process.

⁷ VK Südbayern, decision of 2 April 2019, ref. no. Z 3-3-3194-1-43-11/18.

⁸ Stolz: Electronic, anonymous, transparent, Deutsches Architektenblatt, 3/2020, p 44.

award criteria are kept very general. Due to the transparency requirement, this results in a considerable award risk.

The required confidentiality of the procedure means that the dialogue is conducted exclusively between the awarding authority and the bidders. Public participation during the procedure is excluded.⁹

Planning services requested in the process are also to be remunerated appropriately here. Each individual bidder involved in the dialogue will receive a fee in each dialogue phase that is commensurate with the work involved and the services required.

Looking back, only very few competitive dialogues have been held in German-speaking countries since April 2016. To the extent that this could be assessed based on the limited publicly available information, the majority were not award procedures for planning services, but other awards.

Due to its questionable suitability for the awarding of architectural services, the high procedural effort involved and its lack of relevance in practice, the competitive dialogue as a further award procedure is not dealt with in detail in these guidelines.

Only in the case of large and complex infrastructure measures could the competitive dialogue prove to be expedient, but it then requires intensive preparation and planning.

4.4. Excursus: Concept award

The concept award is not regulated in the VgV.

In recent years, concept awards have played an increasingly important role in the sale or transfer of use of public land and properties.

They are an opportunity for [public clients](#) to transfer or sell land and properties for use under heritable building rights and to influence the subsequent use and / or the quality of the realisation. [see p. 44](#)

The concept award can ensure the realisation of both housing policy and environmental and/or urban development policy objectives and prevent excessive price competition. The quality of the concept submitted by applicants is at the centre of the award decision.¹⁰

⁹ Stolz: Electronic, anonymous, transparent, Deutsches Architektenblatt, 3/2020, p 44.

¹⁰ Further information: Federal Institute for Research on Building, Urban Affairs and Spatial Development, Federal Ministry of the Interior, Building and Community: Baukultur für das Quartier. Prozesskultur durch Konzeptvergabe, Bonn, 2020 and Bundesarchitektenkammer: Grundstücksübertragung nach Konzeptqualität. An instrument for ensuring building culture quality, Berlin 2020.

There are two ways to evaluate the offers:

1. The ground rent or sales price is specified, for example according to the standard land value map, and the quality of the urban development and architectural concept is the sole evaluation criterion.
2. The price offered is also taken into account in the best bid procedure. Recommendation for weighting: Concept quality 70 % (min. 50 %), ground rent or sales price 30 % (max. 50 %).

Planning services as part of the concept are generally remunerable services and must be appropriately remunerated.

The concept should be evaluated according to previously defined and transparent criteria analogous to the evaluation of proposed solutions in the negotiated procedure. Consultation with experts from the fields of architecture and urban planning is recommended.

The concept award can also be carried out when selling private properties if, for example, corresponding conditions are agreed in an urban development contract.

5. ORGANISATION OF NEGOTIATION PROCEDURES

5.1. Simple procedures

The principle of "less is more"

To minimise the bureaucratic burden on clients and architects, the following recommendations can contribute to the simplest possible award procedures:

Simple, objectively ascertainable suitability criteria

The principle of proportionality requires [suitability criteria](#) that are appropriate and related to the contract. In the case of suitable tasks, these must be selected in such a way that smaller office organisations and young professionals can participate (Section 75 (4) VgV). [see p. 49](#)

In general, it is recommended that the suitability of [applicants](#) be determined or checked on the basis of relatively simple, objectively ascertainable criteria - which can also be fulfilled by a large number of applicants. This minimises the risk of complaints and review procedures. [see p. 46](#)

The list of evidence of [technical and professional capability](#) listed under Section 46 (3) VgV is exhaustive and may not be extended. [see p. 51](#)

In the lottery procedure, the number of [bidders](#) may be reduced to the maximum number specified in the contract notice from among the candidates who equally fulfil the suitability criteria (Section 75 (6) VgV). [see p. 46](#)

Applicants who must fulfil the eligibility criteria may also be seeded. The number of participants seeded may not significantly reduce the total number of participants.

Reduced verification and testing effort for negotiated procedures with upstream planning competition

In negotiated procedures with upstream planning competition, proof and examination of the [suitability criteria](#) are only required after the conclusion of the planning competition, but before the contract negotiation (Section 80 (1) VgV), and are limited to the following [see p. 49](#)

Bidders qualified for the negotiated procedure (the winner or all prize winners). The eligibility criteria applicable to the negotiated procedure must already be stated in the competition notice (Section 70 (2) VgV). *see p. 46*

For contracting authorities, this eliminates the need for a separate suitability test of all **participants**, as would be necessary in negotiated procedures without a prior planning competition. *see p. 46*

European Single Procurement Document (ESPD)

The ESPD is a preliminary proof of suitability. This is intended to make further evidence superfluous in the award procedure. Only the bidder who is awarded the contract in the award procedure is obliged to submit all certificates and evidence.

The standard form serves as proof that the bidder has no **grounds for exclusion** from participation in the award procedure and that all eligibility criteria for the selection of candidates have been met. The content and form of the ESPD are set out in ANNEX 2 of the Uniform European Implementing Regulation of 6 January 2016. *see p. 48*

<https://eee.evergabe-online.de>

E-allocation

Since 18 October 2019, the entire award process for a negotiated procedure in accordance with § Section 17 VgV or a competitive dialogue in accordance with Section 18 VgV. This is done via the relevant procurement platforms.

In accordance with Section 9 (3) VgV, no registration may be required for access to the contract notice and the award documents.

When organising planning competitions prior to the award procedure (Section 78 (2) VgV), e-awarding does not apply, as the negotiated procedure, i.e. the award, only begins after the jury meeting.

5.2. Appropriate suitability criteria

Suitability criteria must be related to and proportionate to the subject matter of the contract (Section 122 (4) GWB). In the case of suitable tasks, they must be selected in such a way that smaller office organisations and young professionals can participate (Section 75 (4) VgV). *see p. 49*

With these regulations, the legislator is reacting to the frequently practised excessive suitability requirements, which are contrary to the appropriateness of the requirements.

and thus restrict competition without objective reason (explanatory memorandum to Section 75 (4) VgV).

References - content and period

It should be noted in particular that the comparability of [reference projects](#) does not necessarily require the reference project to have the same type of utilisation as the project to be planned. [see p. 51](#)

References are deemed to be comparable if they are similar in type and scope to the tendered planning service. The fee zones still contained in the HOAI fee tables (2021) can be used as an indication of comparability.¹¹ For example, when planning a kindergarten, it is generally irrelevant that the reference project is also a kindergarten.

If, in exceptional cases, the requirement for the same type of utilisation is established for reference objects, this requires justification based on special circumstances, which must be presented and documented by the client. Otherwise, the client may specify requirements for references that are related to and proportionate to the subject matter of the contract.

Another particularly important point concerns the reference period. The VgV stipulates a reference period of three years as a basic principle, but allows a period of more than three years in order to ensure sufficient competition (Section 46 (3) No. 1 VgV).

For the area of architectural services, the legislator stated in the explanatory memorandum to § 46 VgV as follows:

"In the area of planning services by architects and engineers, the three-year retrospective is often too short for meaningful references. When awarding such services, it is advisable to grant a longer period of time from which the reference projects may regularly originate. Construction projects and their planning have a longer duration, which means that possible reference projects have not yet been completed in the last three years. It can therefore be advantageous for both the client and the bidding companies and serve to ensure competition if the companies are allowed to include interesting projects from a longer period in the evaluation."¹²

¹¹ The legislator refers to Part 1, Section 5 HOAI (2013). In the HOAI (2021), the fee zones are no longer listed in detail, but are still derived from the fee tables and the definition of the fee zones in Part 2, Part 3 and Annex 1 (2021).

¹² VK Bund, decision of 18.09.2017, ref. VK 2-96/17; OLG Celle, judgement of 23.05.2019, ref. 13 U 72/17.

5.3. Participation of smaller office organisations and young professionals

Requirements of the VgV

The legislator emphasises the principle of the appropriateness of suitability criteria, particularly with regard to smaller office organisations and young professionals. Therefore, suitability criteria for suitable tasks must be selected in such a way that smaller office organisations and young professionals can participate (Section 75 (4) VgV). In this way, the legislator is creating the prerequisites for utilising the innovative strength and diversity of ideas of young architects and small offices in the award procedures.

Suitability loan

With the [suitability loan](#), applicants and bidders can utilise the capacities of other architectural firms with regard to the required economic and financial as well as technical and professional performance (Section 47 (1) VgV).

see p. 58

Experience shows that architecture firms enter into efficient and resilient cooperations for the application for planning services and for the realisation of the planning and construction task.

Candidate and bidding consortia

Architects also have the option of forming [applicant or bidding consortia](#), which are to be treated as individual applicants and bidders (Section 43 (2) VgV).

see p. 59

5.4. Evaluation of the offers

Architectural services are awarded on a competitive basis (Section 76 (1) VgV). The main award criterion is therefore quality. The [contract](#) is [awarded](#) on the basis of [the award criteria](#) specified in the contract notice (Sections 58, 76 VgV).

see p. 60

see p. 61

In any case, care must be taken to ensure that price continues to play only a subordinate role in the weighting of the award criteria. Due to the principle of competition on merit, it must also not be a significant criterion.¹³

¹³ Portz: HOAI minimum rates are contrary to EU law, VergabeNavigator 5/2019, 5 et seq; The requirement of competition on merit when awarding more complex services that cannot be clearly described in advance argues in favour of performance and quality specifications forming the main part of the weighting of award criteria by contracting authorities.

6. NEGOTIATION PROCEDURE WITH UPSTREAM PLANNING COMPETITION

6.1. Types of planning competition

The negotiated procedure with upstream planning competition involves two separate procedures to be carried out one after the other (section 4.1 for a detailed description).

Planning competitions are generally organised on the basis of the RPW 2013 guidelines for planning competitions. Accordingly, planning competitions are based on the following principles of RPW 2013:

- equal treatment of all participants in the competition, including in the application process,
- the clear and unambiguous task definition,
- the appropriate price-performance ratio,
- the competent jury,
- the anonymity of the competition entries,
- the order promise.

The upstream planning competition can be organised as an open or restricted planning competition.

Open planning competition

There is no limit to the number of participants in open planning competitions. In this way, the open planning competition utilises the creative potential of many architects.

Non-open planning competition

For the restricted planning competition, participants are selected in a preliminary application procedure ([participation competition](#)) on the basis of clear and non-discriminatory [selection criteria](#) (Section 71 (3) VgV).¹⁴

see p. 46

see p. 48

Since a limited number of participants restricts the possible variety of solutions, the number of participants to be determined should be large enough to be able to select qualified solutions from a wider range of designs.

¹⁴ For the distinction from the suitability criteria, see p. 22, fn. 4.

Two-phase planning competition

The two-phase planning competition can be organised as an open or restricted planning competition.

The two-phase planning competition (Section 3 (4) RPW 2013) utilises the creative potential of many architects in the sense of an open competition and reduces the workload for clients and architects in the first phase.

In the first phase, only fundamental approaches to solving the construction task are evaluated and the competition work to be performed is limited to the necessary extent.

In the second phase, a number of participants reduced by the jury's decision in the first phase compete against each other. Their anonymity is preserved throughout the entire process. The composition of the jury and the terms of reference remain unchanged.

6.2. Procedure: Negotiated procedure with preliminary - open or restricted - design competition

The procedures for open and restricted design competitions are largely identical. The main difference between the open planning competition and the restricted competition is that no [competition](#) and no selection are required (points 3 and 4). The competition announcement therefore also does not have to [specify any selection criteria](#) (point 1).

[see p. 46](#)

Notes on simple procedures for negotiated procedures with upstream non-material planning competition

[see p. 48](#)

- Reduce selection criteria in the competition (e.g. professional licence as a prerequisite for participation, naming a comparable reference)
- Lottery procedure for the selection of applicants if the number of qualified applicants exceeds the maximum number specified in the invitation to tender (in accordance with Section 75 (6) VgV)
- Proof of suitability by the bidder is not required until the contract negotiations; the verification effort is thus reduced to the proof of suitability of the winning bidder or the price bearer (Section 80 (1) VgV)

Process steps

1. EU competition notice

For the announcement of the open design competition, the following information, among others, must be published in the EU form "Competition Notice" (Commission Implementing Regulation (EU) No 2015/1986 ANNEX IX): [see p. 45](#)

OPEN PLANNING COMPETITION COMPULSORY

- [Suitability criteria](#) with minimum requirements for subsequent participation in the negotiation procedure (Section 70 (2) VgV) EU form: Point VI.3 [see p. 49](#)
- [Assessment criteria](#) for submitted competition entries (Section 72 (2) VgV) EU form: Point IV.1.9 [see p. 60](#)

NOT COMPULSORY

- [Award criteria](#) and their weighting (Section 29 (1) No. 2 VgV) EU form: Point III.1 [see p. 61](#)

RESTRICTED DESIGN COMPETITION

Information analogous to open planning competition

Additionally COMPULSORY

Participants already selected must be indicated (seeded participants) EU form: point IV.1.7

- [Selection criteria](#) (Section 71 (3)) EU form: Point III.1.10 [see p. 48](#)

2. Competition for the selection of participants in a restricted design competition

To ensure a diverse and creative competition result, it is advisable to select [participants \(competition\)](#) on the basis of low-threshold requirements - [selection criteria](#). This also gives young and small architecture firms the opportunity to take part in the competition. [see p. 46](#)
[see p. 48](#)

The [suitability criteria](#) must be determined for the contract negotiations following the design competition. Suitability criteria must only be proven by the winner or all prize winners for participation in the negotiation procedure (Section 80 (1) VgV).¹⁵ [see p. 49](#)

Individual participants may be "seeded" by the awarding authority if they fulfil at least the selection criteria.

¹⁵ For the distinction between eligibility criteria and selection criteria, see p. 22, fn. 4.

Figure 3: Procedure for negotiated procedures with upstream planning competition.

1st EU competition notice: Publication with EU form	
for open planning competition COMPULSORY — Suitability criteria with minimum requirements for subsequent participation in the negotiated procedure — Assessment criteria NOT MANDATORY — Award criteria and their weighting	for restricted design competition COMPULSORY — Suitability criteria with minimum requirements for subsequent participation in the negotiated procedure — Already seeded participants — Selection criteria — Assessment criteria NOT MANDATORY — Award criteria and their weighting
	2. Competition for the selection of participants in a restricted design competition — Selection based on predefined selection criteria — Drawing of lots if the number of suitable applicants exceeds the maximum number specified in the call for proposals
	3. information on the selection of applicants in a restricted design competition
4th planning competition and jury meeting according to RPW restricted or open planning competition, one or two phases	
5. information on the result of the planning competition	
6. Invitation to the negotiation procedure — Winner or all winners (as announced) — Suitability test of the winner or winners with supporting documents (as per announcement)	
7. Contract negotiation and acceptance of the final offer — Contract negotiations with winner or all winners — Negotiations on the entire content of the tender, with the exception of minimum requirements and award criteria — After conclusion of the negotiation (single-phase recommended) Invitation to submit final offers with deadline — Award on the basis of published award criteria	
8. information on the outcome of the negotiation procedure	

3. Information on the selection of applicants in a restricted design competition

The principle of transparency requires that unsuccessful applicants be informed of the reasons for their rejection. In the interests of legal certainty, this should be done before the competition is launched.

4. Planning competition and jury meeting according to RPW

Planning competitions must be carried out on the basis of published standardised guidelines (Section 78 (2) VgV). As a rule, this is the RPW 2013.

The jury, which is independent in its decisions, evaluates the anonymised competition entries on the basis of the assessment criteria specified in the competition announcement (Section 72 (2) VgV).

[see p. 59](#)

[see p. 60](#)

In its decisions, the jury must observe the binding specifications of the client as stated in the competition announcement. Partial services that are not authorised or exceed the required scope must be excluded from the evaluation (Section 79 (4) VgV).

The jury must draw up a report to be signed by the judges (jury report) on the ranking and an assessment of the competition entries it has selected (Section 79 (5) VgV).

5. Information on the result of the planning competition

The client shall inform the participants in the design competition of the result without delay by sending the minutes of the jury meeting (Section 79 (5) VgV).

In addition, the results of the planning competition must be submitted to the European Union Publication Office within 30 days (Section 70 (3) VgV).

No later than one month after the decision of the jury, the contracting authority shall publicly exhibit all submitted competition entries with the names of the authors and the minutes of the jury (Section 79 (5) VgV).

6. Invitation to the negotiation procedure

An invitation to the negotiated procedure is issued if and as soon as the result of the design competition is to be realised (Section 80 (1) VgV). The negotiated procedure is subject to the regulations on electronic procurement.

The client may award the contract to the winner or to one of the prizewinners, depending on the stipulations in the competition announcement and the invitation to tender.

In the latter case, all prizewinners must be invited to participate in the negotiated procedure (Section 14 (4) No. 8 VgV). The procedure must be specified in the competition announcement and in the invitation to tender.

Negotiations are not required if the contracting authority has reserved the option in the contract notice to award the contract on the basis of the initial bids (Section 17 (11) VgV).

The invitation to participate in the negotiated procedure is accompanied by an invitation to submit the initial bid. The contract documents, which include the specification of services and the contract conditions (Section 29 (1) VgV), must be sent to the bidders at the same time. In addition, the bidders must be requested to provide [proof of suitability](#) in accordance with the requirements of the competition notice (Section 72 (2), Section 80 (1) VgV). The contracting authority must set the [bidders](#) a deadline of at least 30 calendar days for the receipt of initial bids, calculated from the day after the invitation to tender is sent (Section 17 (6) VgV). The deadline may be shortened by mutual agreement (Section 17 (7) VgV; except for supreme federal authorities).

[see p. 49](#)

[see p. 46](#)

7. Contract negotiation and acceptance of the final offer

Architectural services are awarded on a competitive basis (Section 76 (1) VgV). The main award criterion is therefore the quality of the planning. The contract [is awarded](#) on the basis of the [award criteria](#) specified in the competition notice or in the invitation to tender (Sections 58, 76 VgV).

[see p. 60](#)

[see p. 61](#)

One of the prizewinners, usually the winner, is to be commissioned with the further planning services for the realisation of the project, taking into account the recommendations of the jury, unless there is an important reason to the contrary (Section 8 (2) RPW 2013). Accordingly, the award criterion "[planning quality](#)" must be given a significant percentage weighting.¹⁶

[see p. 62](#)

If [negotiations](#) are conducted and concluded, the contracting authority informs all remaining bidders of this and invites them to submit a revised and finalised tender (Section 17 (14) VgV). The contracting authority sets a standardised deadline for submission. All bidders must submit a complete tender containing information on all award criteria.

[see p. 60](#)

¹⁶ VK Südbayern, decision of 3 July 2019, ref. Z3-3-3194-1-09-03/9, OLG Frankfurt a.M. ruled that the first prize winner must be given a decisive points advantage in the evaluation. (Decision of 11.04.2017 - 11 Verg 4/17), a.A. VK Bund, decision of 22.11.2019 VK 1-83/19.

According to the announcement of the Supreme Building Authority in the Bavarian State Ministry of the Interior, the following applies in the Free State of Bavaria: "When the project is realised, one of the prizewinners is to be c o m m i s s i o n e d with the further planning services, taking into account the recommendation of the jury, unless there is an important reason for not commissioning the project. " (Ref.: IIZ5-4634-001/13).

The contract is awarded solely on the basis of the evaluation of this final tender (Section 17 (14) VgV). The additional organisation of a presentation is permissible, but cannot and must not form the basis of the evaluation.¹⁷

8. Information on the outcome of the negotiation procedure

The bidders must be informed of the outcome of the negotiation procedure immediately after its conclusion with the following information in text form in accordance with Section 126 b BGB (Section 134 (1) GWB):

- Name of the bidder whose bid is to be accepted
- Reasons for the intended non-consideration of your offer
- Earliest date of conclusion of the contract

If requested, the bidders must also be informed within 15 days of receipt of the written application with the following information (Section 62 (2) VgV):

- Reasons for rejecting the offer
- Characteristics and advantages of the successful bid and name of the successful bidder

Remuneration and copyright protection

In the planning competition, prizes and, if applicable, recognition are to be awarded for the best work, the amount of which depends on the importance and difficulty of the construction task and the scope of services in accordance with the HOAI (2021) (Section 79 (1) VgV).

Irrespective of the number of participants in the competition, the total amount awarded corresponds to at least the fee for the preliminary planning - in accordance with the applicable fee schedule - for all specialist disciplines included in the competition. For further information, see § 7 RPW.

The tender documents submitted in the negotiated procedure are not remunerated (Section 77 (1) VgV). However, if further planning services are required (e.g. to revise the competition entries in the negotiated procedure), their assessments are part of the [award criteria](#). The processing must be remunerated appropriately (Section 77 (2) VgV).

see p. 61

The solutions developed in the planning competition are generally subject to copyright protection, which remains unaffected (Section 8 (3) RPW). This means that the protection of the original rights must be observed.

¹⁷ VK Südbayern, decision of 2 April 2019, ref. Z3-3-3194-1-43-11/18; VK Rheinland, decision of 19 November 2019, ref. VK 40/19.

7. NEGOTIATION PROCEDURE WITHOUT UPSTREAM PLANNING COMPETITION

The process of a negotiated procedure without a prior planning competition is characterised by the fact that suitable bidders are selected in a [participation competition](#) and invited to submit an initial bid. If necessary, they may also be asked to submit proposals for solutions that are to be appropriately remunerated. The procedure must be conducted entirely electronically. [see p. 46](#)

Notes for simple procedures

- Low-threshold [eligibility criteria](#) for the call for competition [see p. 49](#)
- Lottery procedure for the selection of applicants if their number is too high even after an objective selection according to the suitability criteria

Process steps

1. Duty to justify and document the choice of procedure (Section 78 (2) VgV)

When awarding planning services in building, urban and bridge construction as well as in landscape and open space design, the contracting authority first checks whether a design competition should be held. The decision must be documented (Section 78 (2) in conjunction with Section 8 VgV).

The audit is carried out in accordance with the principles of Section 78 (1) VgV.

Negotiated procedures without upstream planning competitions can be suitable for construction tasks in existing buildings and refurbishments.

2. EU contract notice

To publicise the negotiated procedure, the following information, among others, must be published in the EU form "[Contract notice](#)" (Commission Implementing Regulation (EU) No. 2015/1986, ANNEX II): [see p. 45](#)

- [Suitability criteria](#) and minimum requirements (Section 122 (4) GWB) EU form: III.1 [see p. 49](#)
- Planned number of candidates (§ 51 VgV) EU form: II.2.9
- Reservation of award on the basis of initial bids without negotiation (Section 17 (11) VgV) EU form: IV.1.5
- [Award criteria](#) and their weighting (Section 127 (5) GWB, Section 58 (3) VgV)¹⁸ EU form: II.2.5 [see p. 61](#)
- If an elaboration of proposed solutions is required, the description of the task, the evaluation criteria and their weighting as well as the award criteria must be published. These are award criteria.
- Electronic address for retrieving the tender documents

3. Competitive tender for the selection of bidders

In the [competition for participation](#), the contracting authority checks that there are no [grounds for exclusion](#) (Sections 123, 124 GWB) and that the [candidates](#) are suitable on the basis of the available evidence using appropriate [suitability criteria](#). These are generally self-declarations (Section 48 (2) VgV). Bidders are selected on the basis of the specified suitability criteria. [see p. 46](#)
[see p. 49](#)
[see p. 46](#)

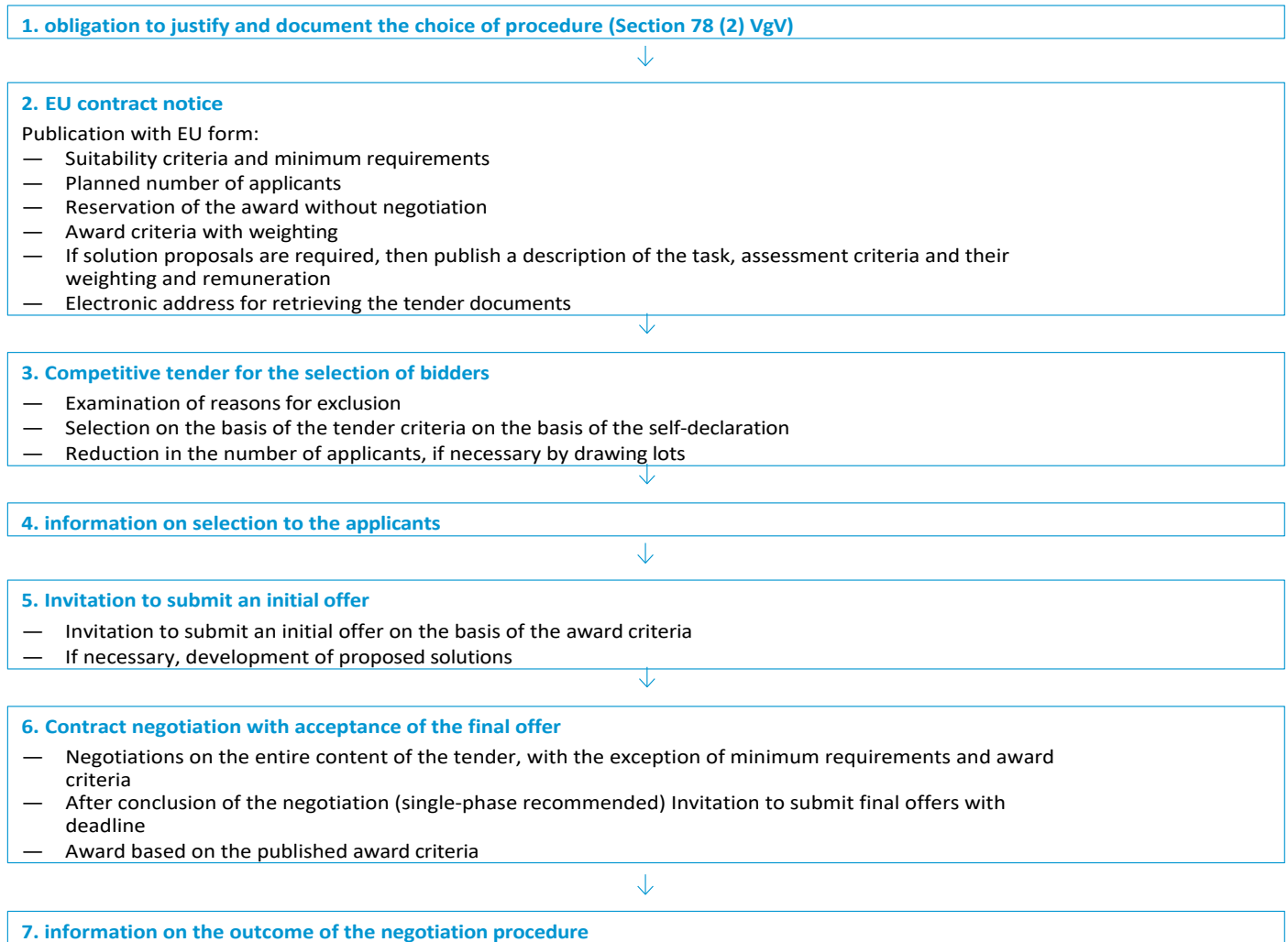
[see p. 48](#)

4. Information about the selection to the applicants

In the interests of an orderly procedure and transparency, it is recommended that all unsuccessful applicants be informed of the reasons for their rejection and the advantages of the selected applicants, irrespective of any corresponding application (Section 62 (2) VgV).

¹⁸ The award criteria and their weighting can also be published in the tender documents (Section 58 (3) VgV), which must already be available in full at the time of the contract notice (Section 41 (1) VgV).

Figure 4: Procedure for negotiated procedure without upstream planning competition. The numbering of the procedural steps corresponds to the procedure described below.



5. Invitation to submit an initial offer

The contracting authority invites the [bidders](#) to submit an initial bid on the basis of the weighted [award criteria](#) (Sections 17 (5), 52 (1) VgV). [see p. 46](#)
[see p. 61](#)

Bidders must provide evidence of the suitability criteria listed in the contract notice and confirmed in the self-declaration.

The deadline for the receipt of initial tenders is at least 30 days, calculated from the day after the invitation to tender is sent (Section 17 (6) VgV).

With the exception of supreme federal authorities, the contracting authority may set the deadline for the submission of tenders by mutual agreement with the candidates invited to submit tenders, provided that all candidates are granted the same deadline for the submission of tenders. If the deadline for submission of tenders is not mutually agreed, it shall be at least ten days from the day after the invitation to tender is sent (Section 17 (7) VgV). The ten-day period can therefore only be considered if an attempt to reach an amicable agreement has previously been made in vain.

If the contracting authority requires the preparation of proposed solutions for the planning task in the form of drafts, plans, drawings, calculations or other documents (Section 76 (2) VgV), their evaluation is part of the award criteria.

These services must be remunerated appropriately. The HOAI (2021) can and should continue to be the benchmark for the appropriateness of the fee.¹⁹

To ensure sufficient competition, at least three bidders must be invited to submit bids (proposed solutions) (Section 51 (2) and (3) VgV).

Non-requested services that go beyond the previously defined scope of services may not be taken into account in the award decision (Section 76 (2) VgV).

If the price or costs of a tender appear unusually low in relation to the service to be provided, the contracting authority shall request clarification from the tenderer (Section 60 (1) VgV). If the tender is not clarified satisfactorily or if it can be assumed that the service to be awarded will not be provided satisfactorily, the tender may be rejected (Section 60 (3) VgV).

¹⁹ See chapter "Estimating the contract value" and p. 23, fn. 5.

6. Contract negotiation with acceptance of the final offer

Architectural services are awarded on a competitive basis (Section 76 (1) VgV). The main award criterion is therefore quality. The contract is awarded on the basis of the award criteria specified in the contract notice (Sections 58, 76 VgV). *see p. 60*
see p. 61

All bidders must be invited to negotiate, unless the option of awarding the contract to the initial bids submitted was reserved in the contract notice and is utilised (Section 17 (11) VgV).

Once the negotiations have been concluded, the contracting authority informs all remaining bidders of this and invites them to submit a revised and finalised tender (Section 17 (14) VgV). The contracting authority sets a standardised deadline for submission. All bidders must submit a complete tender containing information on all award criteria. The contract is awarded solely on the basis of the evaluation of this final tender (Section 17 (14) VgV). The additional organisation of a presentation is permissible, but cannot and must not form the basis of the evaluation.²⁰

7. Information on the outcome of the negotiation procedure

The bidders must be informed of the outcome of the negotiation procedure immediately after its conclusion with the following information in text form in accordance with Section 126 b BGB (Section 134 (1) GWB):

- Name of the bidder whose bid is to be accepted
- Reasons for the intended non-consideration of your offer
- Earliest date of conclusion of the contract
- On request, the bidders must also be informed within 15 days of receipt of the written application with the following information (Section 62 (2) VgV):
- Reasons for rejecting the offer
- Characteristics and advantages of the successful bid and name of the successful bidder

Remuneration and copyright protection

The application documents submitted for the invitation to tender and the tender documents submitted for the contract negotiations are not remunerated (Section 77 (1) VgV). The preparation of proposed solutions, on the other hand, is to be remunerated appropriately (Section 77 (2) VgV). The benchmark for this can and should continue to be the HOAI (2021) in accordance with the ECJ ruling of 4 July 2019.²¹

²⁰ VK Südbayern, decision of 2 April 2019, ref. no. Z 3-3-3194-1-43-11/18; VK Rheinland, decision of 19 November 2019, ref. no. VK 40/19.
a.A. VK Bund, decision of 22 November 2019 VK 1-83/19.

²¹ See chapter "Estimating the contract value" and p. 23, fn. 5.

8. GENERAL BUILDING BLOCKS OF NEGOTIATION PROCEDURES AND PLANNING COMPETITIONS

8.1. Public client

For procurement procedures above the EU thresholds, Section 99 GWB defines the personal scope of application of public procurement law. There are four categories of contracting authorities:

§ Section 99 No. 1 GWB

So-called traditional public clients are, in particular, regional authorities, i.e. the federal government, federal states, districts and municipalities. They also include special units without their own legal personality, such as in-house operations or foundations without legal capacity.

§ Section 99 No. 2 GWB

So-called functional clients are organisations with their own legal personality (e.g. GmbH, public law institution) that carry out an activity in the public interest of a non-commercial nature and have a special - individually defined - proximity to the state. The special proximity to the state exists in cases of "predominant financing", "supervision of the management" or "appointment of more than half of the members of the bodies appointed to manage or supervise". Categorisation as a functional contracting authority requires a careful examination of the individual case. Depending on the structure, this may also include municipal housing associations in particular.

§ Section 99 No. 3 GWB

Associations whose members fall into the above two categories (e.g. municipal special-purpose associations, landscape associations, waste management associations, special-purpose transport associations, water and wastewater associations).

§ Section 99 No. 4 GWB

So-called subsidised clients are legal entities that are not public clients within the meaning of the three categories mentioned above, but receive more than 50% subsidies from such clients for a specific project. Only the following contracts are included: Civil engineering works, construction of hospitals, sports, recreational or leisure facilities, school, university or administrative buildings and related services and competitions.

8.2. Competition and contract notice

Competition announcement

In the case of [negotiated procedures with upstream design contests](#), the design contest must be drawn up in accordance with the model set out in Annex IX of Implementing Regulation (EU) 2015/1986. The template must be completed in full. *see p. 32 ff.*

The invitation to tender must be made available for direct download via a link (I.3). In the case of a restricted competition with seeded candidates, only part 1 of the invitation to tender (details of the procedure without the brief) may be made available. (The award documents for the subsequent negotiated procedure do not yet have to be published).

In the restricted competition, clear and non-discriminatory [selection criteria](#) must be specified in addition to the conditions of participation (III.1.10). The conditions of participation and selection criteria must be designed in such a way that young and small architectural practices also have a real chance of participating. *see p. 48*

Participants can also be placed here (IV.1.7), but they must fulfil the conditions of participation.

The [eligibility criteria](#) and any minimum requirements must be specified for the subsequent negotiation procedure with the prizewinners (VI.3). The [award criteria](#) applicable in the negotiation procedure and their weighting do not yet have to be announced in full. Only the weighting of the envisaged award criterion "competition result" (Section 24, Annex I to the RPW), referred to in Chapter 8.14. as "planning quality", must be disclosed. *see p. 49*
see p. 61

Information on how to organise the competition announcement and applications for participation can be found at www.vgv-architekten.de.

Contract notice

For [negotiated procedures without an upstream design competition](#), the template in Annex II of Implementing Regulation (EU) 2015/1986 must be used. The template must be completed in full. *see p. 39 ff.*

All award documents of the 1st stage (call for tenders) and the 2nd stage (invitation to tender, contract terms of reference) must be made available for direct download via a link (I.3).

The contract notice must specify the [eligibility criteria](#) and minimum requirements for the phase of the call for competition as well as the declarations and evidence required in this regard (III.1). In principle, only self-declarations should be required. *see p. 49*

(Section 48 (2) VgV). In addition to the general requirements (§§ 46 ff. VgV), the special requirements according to § 75 VgV must be observed. Furthermore, the objective and non-discriminatory suitability criteria and the number of candidates to be selected must be stated (II.9).

If the client has drawn up an evaluation matrix to assess suitability, this must be published in full.

If the contracting authority does not reserve the right (IV.1.5 Contract notice) to award the contract on the basis of the original tenders, it must carry out the negotiated procedure and then invite revised tenders to be submitted.

Information on the design of the contract notice and requests to participate at www.vgv-architekten.de.

8.3. Applicant - Participant - Bidder

Applicants

Applicants within the meaning of the guidelines are persons (natural or legal) or groups of such persons (applicant consortia) who apply to participate in an award procedure or a restricted design competition.

Participants

Participants are persons (natural or legal) or associations of such persons who submit competition entries for a planning competition.

Bidder

Bidders are persons (natural or legal) or associations of such persons ([bidding consortia](#)) who have submitted a bid following a call for competition or planning competition at the request of the client. *see p. 59*

8.4. Participation competition

The purpose of the competition is to select the participants in the competition or bidders by checking the grounds for exclusion and on the basis of objective selection or suitability criteria.

The selection is made

- in a restricted design competition on the basis of clear and non-discriminatory selection criteria (Section 71 (3) VgV)
- in the case of negotiated procedures without upstream planning competition, on the basis of objective and non-discriminatory suitability criteria that are appropriate and related to the contract (Sections 51 (1), 75 (4) VgV)

Competition for restricted design competition

In a restricted design competition, the contracting authority checks that the conditions for participation are met and - where provided for - that there are no [grounds for exclusion](#) (Sections 123, 124 GWB).

see p. 48

The client then selects the participants in the competition on the basis of the predetermined [selection criteria](#).

see p. 48

Competition for negotiated procedure without design competition

In the competition for participation, the contracting authority first checks that there are no [grounds for exclusion](#) (Sections 123, 124 GWB).

see p. 48

If these are not given, the self-declarations of suitability submitted by the candidates are checked against the [suitability criteria](#) specified by the contracting authority (Sections 42 ff, 75 VgV).

see p. 49

Subsequently, the selection is made from the generally suitable applicants on the basis of the specified suitability criteria. If the suitability criteria are equally fulfilled by several applicants, a decision may be made by drawing lots (Section 75 (6) VgV).

Negotiated procedure with planning competition

In this case, there is no competition. The bidders to be involved are - depending on the definition - the winner or the prizewinners of the competition. Their suitability must be checked in advance using the [suitability criteria](#) specified in the competition announcement for the subsequent negotiated procedure.

see p. 49

As suitability does not have to be proven until the contract negotiations, the verification effort is reduced compared to the negotiated procedure, in which the suitability of all applicants has to be verified, in the upstream planning competition to the winner or to all prize winners (Section 80 (1) VgV).

8.5. Reasons for exclusion

Company-related grounds for exclusion are regulated in the GWB (Sections 123, 124 GWB) and are examined in the context of suitability.

Mandatory grounds for exclusion include criminal aspects and outstanding payments of taxes and duties (Section 123 GWB). If there is a mandatory reason for exclusion, the applicant must be excluded; the contracting authority has no discretionary powers in this decision.

The contracting authority has discretionary powers with regard to the optional grounds for exclusion (Section 124 GWB). The exclusion must be justified on a case-by-case basis. This includes the possibility of exclusion due to significant or persistent poor performance in the past (Section 124 ARC para. 7).

8.6. Selection criteria in the restricted planning competition

Selection criteria are used to select participants for the restricted planning competition and must be formulated by the contracting authority in a clear and non-discriminatory manner (Section 71 (3) VgV).

Selection criteria must be distinguished from suitability criteria.²² To ensure a diverse and creative competition result, it is advisable to differentiate between the selection of participants for the planning competition and their suitability for the contract negotiation and thus for the contract, also with regard to the requirements to be met. Selection criteria should therefore have lower and different requirements than suitability criteria.

Clear and non-discriminatory selection criteria, which define a framework but not a minimum scope, can be the following:

- Professional licence: Proof that the participants are authorised to use the professional title of architect, landscape architect, urban planner, etc. in accordance with the legal regulations of their home country.
- Reference projects or competition entries with comparable planning requirements

The selection criteria must be appropriate and related to the task. They must be selected in such a way that they give smaller office organisations and young professionals the opportunity to participate in award procedures (Section 75 (4) VgV by analogy).

²² VK Berlin, decision of 12 November 2019, VK - B 2 - 29/19.

8.7. Suitability criteria

The suitability criteria are used to determine whether the applicant has the professional licence and ability required for the tendered contract.

Principle of proportionality

Suitability criteria must be related to the subject matter of the contract and proportionate to it (Section 122 (4) GWB). For suitable tasks, they must be selected in such a way that smaller office organisations and young professionals can also participate (Section 75 (4) VgV).

With these regulations, the legislator reacted to the frequently practised excessive suitability requirements, which violate the appropriateness of the requirements and thus restrict competition without objective reasons. "Too few smaller office organisations and newcomers to the profession are able to take part in the award procedures because, for example, they are unable to meet the client's requirements for reference projects. This creates a cycle that means the inevitable exclusion of smaller offices: they cannot develop a reference project and therefore cannot present a reference project in the next calls for tenders." (Justification for

§ Section 75 (4) VgV)

Sections 44 to 46 VgV define the framework of the permissible suitability criteria, but not a minimum scope. Depending on the type and scope of the service to be procured, the contracting authority may specify the suitability criteria required in individual cases, taking into account that unnecessarily high requirements could prevent potential candidates or bidders from participating in the award procedure.²³

From this principle, it follows for the comparability of references that it is generally irrelevant whether applicants have already planned or realised objects of exactly the same type of use as the planning contract to be awarded. In order to justify a deviation from this, special circumstances are always required, which must be presented and documented by the client. Accordingly, only projects of comparable complexity can be requested as a rule. The fee zones contained in the HOAI (2021) can serve as an indication of comparability.²⁴

Suitability criteria for economic and financial performance Minimum annual

see p. 56 f. Suitability criteria for selected planning tasks

turnover

The contracting authority may require a certain minimum annual turnover, including a certain minimum annual turnover in the area of activity of the contract (Section 45 (1) No. 1 VgV).

²³ VK Nordbayern, decision of 07 November 2019, ref. RMF-SG 21-3194-4-48.

²⁴ See 5.2 "Appropriate suitability criteria", there "References - content and period".

The required minimum annual turnover may only exceed twice the estimated contract value if there are special risks due to the nature of the subject matter of the contract. Such a requirement must be duly justified (Section 45 (2) VgV).

Recommendation

In general, the fee turnover achieved by an applicant in the past is a purely quantitative criterion that has no particular added value for ensuring a quality-orientated award. In addition, a minimum turnover is regularly in conflict with the requirement that smaller office organisations and new entrants to the profession participate appropriately.

If the intention is to specify a minimum turnover, this requirement should be justified.²⁵ In line with the principle of proportionality, this should not be based on the contract value of the overall contract for planning services, but on the fee amount that is paid per year from the contract. Architects' planning services usually extend over several years - the turnover is distributed accordingly.

The minimum turnover to be proven is therefore generally twice the annual turnover calculated from the order over the term of the contract.

Sales figures that exceed the minimum requirement should not lead to a better rating.

Calculation approach

Minimum turnover to be proven per year = (total fee / contract term in years) × 2

Balance sheets

The contracting authority may also request information on the balance sheets of the candidates or bidders; the ratio between assets and liabilities stated in the balance sheets may be taken into account "if the contracting authority applies transparent, objective and non-discriminatory methods and criteria for consideration and specifies the methods and criteria in the award documents" (Section 45 (1) no. 2 VgV).

Recommendation

In the Federal Republic of Germany, architectural services are predominantly provided by personally liable freelancers who do not prepare a balance sheet to assess their tax burden.

Balance sheets are therefore not a suitable criterion for awarding architectural services.

²⁵ OLG Jena, decision of 2 August 2017 - 2 Verg 2/17 even provides for a mandatory justification.

Professional or public liability insurance

The contracting authority may also require "professional or public liability insurance in a certain appropriate amount" (Section 45 (1) No. 3 VgV).

Recommendation

By submitting proof of professional indemnity insurance cover in an amount appropriate to the task, the client confirms that the applicant can fulfil his insurance obligation without default and that there are no cases of liability that preclude further insurance. Confirmation from an insurer that insurance cover will be provided in the event of an assignment is also sufficient proof.

Professional or public liability insurance policies that exceed the minimum requirement should not lead to a better rating.

Final recommendation for the assessment of economic and financial performance

When determining the economic and financial capacity of architects, proof of appropriate professional liability insurance cover is particularly useful. In justified cases, the requirement of a minimum turnover of twice the annual turnover calculated from the order over the term of the contract may also be considered.

Suitability criteria for technical and professional performance

"The contracting authority may impose requirements with regard to the technical and professional capacity of candidates or tenderers to ensure that they have the necessary human and technical resources and sufficient experience to fulfil the contract to an appropriate standard" (Section 46 (1) sentence 1 VgV)

Contracting authorities may not require candidates or tenderers to provide evidence of their technical and professional capacity other than that listed in Section 46 (3) (therefore, for example, no work sample). Similarly, candidates or tenderers may not provide other evidence of their technical and professional capacity.

The contracting authority may request the following evidence:

References

The VgV specifies a period of three years for the references to be provided (Section 46 (3) No. 1 VgV). However, this period is significantly too short for the evaluation of planning services.

The explanatory memorandum to the VgV therefore rightly states that it can be advantageous for both the client and the bidders and ensures competition if interesting projects from a longer period can be included in the evaluation (for example, especially when it comes to rarely commissioned special construction works).

In addition, buildings prove their suitability for use after a longer period of time and can therefore be better used as a suitable reference.

The required content of references is defined in Section 75 (5) VgV: "If the contracting authority requests suitable references within the meaning of Section 46 (3) No. 1 VgV, it shall accept reference objects whose planning and consulting requirements are comparable to those of the planning and consulting services to be awarded. For the comparability of the reference objects, it is generally irrelevant whether the applicant has already planned or realised objects of the same type of use."²⁶

The explanatory memorandum to Section 75 (5) VgV states: "The term 'planning requirements' refers to the definition in Section 5 HOAI and provides practical guidance in this respect. The fee zones of the reference projects must be set in relation to the planning requirements of the tendered planning service."²⁶

The explanatory memorandum continues: "For example, in most cases it is irrelevant whether the construction project to be planned was carried out for a public contractor or for a private client. Nor is it necessary for the planning of a kindergarten to be awarded that the reference object was also a kindergarten. In any case, there would have to be additional circumstances that justify this. The regulation is intended to send a signal to practitioners to at least reconsider the frequently observed 'thoughtless' demand for the same type of use."

Furthermore, the contracting authorities are free to decide which requirements for reference projects they consider appropriate and necessary. However, the requirements must always be related to the subject matter of the contract and proportionate to it.²⁷

Recommendation

It is recommended that the reference period for services rendered be extended to at least ten years. Likewise, planned and unrealised projects as well as projects in planning or execution or competition successes should be accepted as proof of professional suitability.

²⁶ In Part 1 HOAI (2021), the fee zones are no longer listed in detail in Section 5, but are still derived from the fee tables and the definition of the fee zones in Part 2, Part 3 and Annex 1 HOAI (2021).

²⁷ VK Bund, decision of 18.09.2017, ref. VK 2-96/17; OLG Celle, judgement of 23.05.2019, ref. 13 U 72/17.

Comparable planning requirements are decisive, so that references may not generally be limited to projects with the same type of utilisation as the planning service to be awarded.

The number of references required should be kept to a minimum in order to give smaller offices and newcomers to the profession a chance to participate. As a rule, one successful reference is sufficient proof of performance.

References must be assessed qualitatively. Objective [assessment criteria](#) must be applied and named in the publication. These can be, for example, functional fulfilment, usage requirements or planning factors such as usable area / gross volume as proof of economic efficiency. [see p. 60](#)

Submitted references with a higher planning requirement or more references than required may not lead to a better evaluation.

Technical specialists

"Specification of the technical specialists or technical bodies to be deployed in connection with the provision of the service" (Section 46 (3) No. 2 VgV).

Recommendation

The enquiry about the intended technical specialists as part of the application process has proven to be unsuitable in practice. The applicant is almost forced to offer the best possible project staffing for each procedure. This results in multiple nominations or unrealisable project appointments.

The qualification of the project team can be stipulated as an award criterion. This qualification criterion is not applicable when assessing technical and professional capacity.

Technical equipment, quality assurance measures

"Description of the company's technical equipment, quality assurance measures and investigation and research capabilities" (Section 46 (3) no. 3 VgV)

Recommendation

Requirements for the technical equipment must correspond to the task and the scope of the project, as must quality assurance measures. The company's investigation and research capabilities only play a role in very specialised tasks.

Quality assurance measures such as office and project organisation, cost and schedule control or change and supplement management can be taken into account as an [award criterion](#).

see p. 61

To avoid a legally problematic "double consideration", it is advisable to waive consideration in the context of the suitability criteria.²⁸

Proof of studies and training

"Proof of studies and training as well as certificates of authorisation to practise the profession for the owner or managers of the company, insofar as this proof is not assessed as an award criterion" (Section 46 (3) No. 6 VgV)

Recommendation

Since entry in the list of architects is regulated and the corresponding proof of studies and training must be provided, this point concerns the general authorisation and permission to practise the profession in accordance with § 44 VgV.

Confirmation of professional authorisation by a chamber of architects is proof of technical and professional competence for this point. The same applies to natural persons resident in the EEA/WTO/GPA states who are authorised to use the professional title of architect, landscape architect, interior architect or urban planner in accordance with the legal provisions of their home state, depending on the task. If the professional title is not regulated by law in the respective home country, the professional requirements as an architect, landscape architect, interior architect or urban planner are met by anyone who holds a diploma, examination certificate or other proof of authorisation recognised in accordance with 2013/55/EU.

Number of employees

"Declaration showing the average annual number of employees of the company and the number of its managers over the last three years" (Section 46 (3) No. 8 VgV)

Recommendation

The following approach should be used to check the appropriate number of employees for a project:

²⁸ VK Südbayern decision of 02/04/2019, AZ Z 3 - 3 - 3194 - 1 - 43 - 11 / 18

The contract value divided over the expected planning and construction period gives the contract value per year, divided by the cost per employee gives the number of employees required per year. As a minimum requirement, a maximum of twice this number should be set.

Capacities exceeding the minimum requirement should not lead to a better rating.

Technical equipment

"Declaration showing the equipment, devices and technical equipment available to the company for the performance of the contract" (Section 46 (3) no. 9 VgV)

Recommendation

The client should carefully check whether specific technical equipment is required as a suitability criterion to fulfil the task.

Fittings and equipment that go beyond the minimum requirements should not lead to a better rating.

Further suitability criteria

Proof of the supply chain and environmental management system (Section 46 (3) No. 4 and No. 7 VgV) is not suitable for the award of architectural services. A check of production capacity, technical performance, investigation and research capabilities carried out by the contracting authority (Section 46 (3) No. 5 VgV) can only be used as a criterion in very few cases.

§ Section 46 (3) No. 11 VgV only applies to delivery services.

Final recommendation for the assessment of technical and professional performance

Proof of an appropriate reference (same fee zone), the completion of which can date back up to ten years and which does not have to be identical to the task to be awarded in terms of the type of use, is helpful in determining technical and professional capability.

The criteria technical specialists, quality assurance and technical equipment should not be used as suitability criteria but as award criteria to assess the quality of the bidders' performance. For the number of employees criteria, the extent to which the specified standards are appropriate and proportionate to the subject matter of the contract should be carefully examined.

Fig. 5: Recommendations for suitability criteria

Suitability criteria for selected planning tasks in the context of negotiated procedures and planning competitions

SELECTED PLANNING TASKS ACCORDING TO OBJECT LIST, HOAI (2021), ANNEX 10	
LOW PLANNING REQUIREMENT Fee zone II	— Simple sales warehouses and halls — Boathouses and greenhouses
AVERAGE PLANNING REQUIREMENT Fee zone III	— Simple residential, office and administration buildings — Primary schools — Kindergartens and day nurseries — simple sports halls — simple workshops
HIGH PLANNING REQUIREMENT Fee zone IV	— Complex residential, office and administration buildings — Education centres — Community centres — Universities — Multipurpose halls

VERY HIGH
PLANNING REQUIREMENT
Fee zone V

- Laboratory and institute building
- Stadiums
- Complex industrial and manufacturing plants
- Hospitals
- Museums, theatres, opera houses, concert halls

	PROOF ● required ● sensible - not required TYPE OF PROCEDURE	Economic benefits and financial efficiency (\$ 45 par . 1)			Technical performance and ability (\$ 4 ability para . 3)						
		No. 1 Minimum annual turnover	No. 2 Balance sheets	No. 3 Professional liability certificate	No. 1 References	No. 2 Specification of technical specialists	No. 3 Technical equipment, quality assurance	No. 6 Professional licence	No. 8 Number of employees	No. 9 Equipment, devices	No. 10 Subcontracts
	Negotiated procedure planning competition			● ●	●			● ●			● ●
	Negotiated procedure planning competition			● ●	●			● ●			● ●
	Negotiated procedure planning competition	●		● ●	● ●	●	●	● ●	●		● ●
	Negotiated procedure planning competition	●		● ●	● ●	●	●	● ●	●		● ●

8.8. Suitability loan

To prove their suitability (economic and financial as well as technical and professional capacity), applicants in the competition for participation (negotiated procedure without upstream planning competition) as well as winners and award winners (bidders in negotiated procedures after planning competitions) can utilise the capacities of other architectural firms (Section 47 (1) VgV).

Principles

To this end, the applicant or tenderer must prove, by submitting the evidence or the self-declaration on the suitability criteria, that the resources required for the contract from the other architectural firm will actually be available to them.

Proof can be provided, for example, by a corresponding declaration of commitment from the architectural firm offering the suitability loan. The possibility to lend one's own services exists irrespective of the legal nature of the existing connections between the candidate or bidder and the other architectural firms. The architecture firm offering the loan must also not fulfil any grounds for exclusion (Section 47 (1) VgV).

However, the aptitude loan in the area of professional qualification and experience can only be utilised if the consulted companies also provide the services for which professional qualification and experience are required themselves (Section 47 (1) VgV).

In the case of a suitability loan in the area of economic and financial capacity, the contracting authority may demand joint liability of the candidate or tenderer and the other company for the execution of the contract in accordance with the scope of the suitability loan (Section 47 (3) VgV).

8.9. Subcontracts

"Indication of which parts of the contract the company may intend to award as subcontracts" (Section 46 (3) No. 10 VgV)

Recommendation

The utilisation of the capacities of subcontractors for the execution of parts of the contract must not influence the evaluation of the technical and professional performance.

Special competences for sub-areas of the services to be provided can offer considerable advantages for the completion of the task. Conversely, the client may have an interest in certain parts of the contract not being performed by

subcontractor, but by the company itself. See also Section 47 (5) VgV.

The subcontracting of partial services that require specialist expertise, especially for more complex tasks - for example, service phases 6 to 8 of most HOAI (2021) service profiles - must not lead to an unfair disadvantage for the applicant.

8.10. Candidate and bidding consortia

The legislator has included the cooperation of architectural firms in applicant and bidder consortia in the VgV. These are to be treated as individual applicants and bidders in the award procedure (Section 43 (2) VgV) and can in turn utilise the instrument of [suitability lending](#) (Section 47 (4) VgV).

The contracting authority may only request a specific legal form from the candidates when awarding the contract if this is necessary for the proper performance of the contract (Section 43 (3) in conjunction with Section 43 (2) sentence 2 VgV).

see p. 58

8.11. Jury

In the planning competition, the jury selects the works that best fulfil the requirements of the competition ([assessment criteria](#)).

Composition and appointment of the jury

see p. 60

The client selects the judges and can therefore decide on the content and technical orientation of the jurors. As a member of the jury, representatives of the client can contribute their positions to the consultation and voting process. A carefully selected and composed jury will always seek a consensual discussion with the client.

The majority of the judges must have the same or an equivalent qualification as that required of the participants. The majority of the judges must also be independent of the contracting authority (Section 79 (3) VgV).

The client is always involved in the jury and its decisions. This means that the client is also involved in deciding the winners and prizewinners. Experience shows that award juries see themselves as an advisory body to the client and deal responsibly with the client's requirements.

It is advisable to involve the jury not only in the evaluation of the competition entries but also in the formulation of the competition documents and the evaluation criteria.

8.12. Assessment criteria

Assessment criteria are the criteria specified by the contracting authority according to which the jury makes its decisions in planning competitions (Section 72 (2) VgV).

The jury is independent in its selection of the competition winner(s). The selection is to be made on the basis of the competition entries, which are submitted anonymously, and only on the basis of the assessment criteria.

All assessment criteria stated in the competition are binding. Subsequent changes to the criteria, for example at the jury meeting, are not possible. A weighting and differentiation of the criteria, such as the creation of sub-criteria, is permitted, provided this was reserved in the competition brief.

The following criteria, for example, can be used to judge the competition entries:

- Architectural quality
- Urban integration
- Internal function and interior quality
- Development and open spaces
- Ecological and energy concept (e.g. sustainability, resource and climate protection)
- Economic efficiency

8.13. Order negotiation

The essence of the negotiated procedure is that the contracting authority and the candidate negotiate the subject matter of the tender and the tender submitted for it and thus specifically the future contract content, conditions and fee. It is not permitted to conduct negotiations on minimum requirements and award criteria (Section 17 (10) VgV).

Within the framework of Section 17 VgV, the contracting authority is authorised to flexibly structure the negotiation phase if the principles of public procurement law such as equal treatment and transparency are observed (Section 17 (13) VgV).

The contract is awarded on the basis of the award criteria published in the contract notice or the tender documents (Section 58 (3) VgV) (Section 17 (14) VgV).

Recommendations for order negotiations

It is recommended that negotiations are not conducted in several phases.

The bidders must be informed transparently of the identified need for optimisation before the next round of bids.

In negotiated procedures with upstream planning competition, the winners or all prizewinners (bidders) must be invited to participate in the negotiated procedure; in negotiated procedures without upstream planning competition, all bidders selected in the participation competition must be invited to participate.

8.14. Award criteria

General

In the negotiated procedure (contract negotiation), the contracting authority evaluates the tenders comparatively on the basis of award criteria and awards the contract to the most cost-effective tender with the best price-performance ratio. The contracting authority can determine the qualitative award criteria according to its procurement requirements (Section 58 (2) No. 1 VgV).

Possible award criteria are

- Planning quality in terms of the fulfilment of design, functional, constructive, ecological and economic requirements
- Project implementation, including organisation, qualification and experience of the personnel entrusted with the execution of the order
- Fee

The award criteria must be weighted according to their importance for the tender evaluation. A percentage evaluation of the individual award criteria is recommended.

Differentiation within an award criterion can be achieved by spreading the points in a similar way to the school grading system with the linear allocation of points from 1 to 5. When determining this, care must be taken to ensure that the principle of competition on merit is observed in the result.

Based on the weighting and the spread of points, applicants can already recognise in the contract notice the relevance that the client attaches to the various criteria and can thus design their bid accordingly.

Award criteria and their weighting must be published in the contract notice or in the tender documents (Sections 58, 76 VgV).

Principle of awarding competition on merit

Architectural services are awarded on a competitive basis (Section 76 (1) VgV). The main award criterion is the quality of the expected service, which is measured in terms of design, functional, constructive, ecological and economic aspects (see explanatory memorandum to Section 76 (1) VgV).

The fee can be taken into account as an award criterion for determining the most economical tender. Due to the nature of performance-based competition, which centres on the establishment and evaluation of quality criteria, "it follows that the fee should not be the sole criterion and should not be given overriding weight."²⁹

Award criterion "Planning quality"

When organising a planning competition or commissioning proposed solutions, the "planning quality" is a key award criterion. The result of the planning competition or the technical evaluation of proposed solutions serves as a sound basis for the negotiation procedure (search for the most suitable partner).

In negotiated procedures with an upstream planning competition, one of the prizewinners, usually the winner, is to be commissioned with the further planning services, taking into account the recommendation of the jury, unless there is an important reason to the contrary (Section 8 (2) RPW 2013). When weighting the award criteria of planning quality, project realisation and fee, this must be taken into account in an appropriate manner.³⁰

Recommended weighting

In the case of upstream planning competitions or commissioned solution proposals: 35 - 50 per cent (see evaluation matrix in Tables 6 and 7)

Recommended point spread

Point spread according to rankings analogue to the school grading system with linear point allocation from 1 to 5

²⁹ Ziekow/Völlink: Vergaberecht, Munich, 2020, § 76 VgV Rn. 3, with further references.

³⁰ VK Südbayern, decision of 3 July 2019, ref. Z3-3-3194-1-09-03/9, OLG Frankfurt a.M. ruled that the first prize winner must be given a decisive points advantage in the evaluation. (Decision of 11.04.2017 - 11 Verg 4/17), a.A. VK Bund, decision of 22.11.2019 VK 1-83/19. According to the announcement of the Supreme Building Authority in the Bavarian State Ministry of the Interior, the following applies in the Free State of Bavaria: "When the project is realised, one of the prizewinners is to be commissioned with the further planning services, taking into account the recommendation of the jury, unless there is an important reason to the contrary." (Ref.: IIZ5-4634-001/13).

e.g. ranking with three places: Winner: 5 points / 2nd place: 3 points / 3rd place: 1 point

Ranking with four places: Winner: 5 points / 2nd place: 4 points / 3rd place: 3
Points / 4th place: 2 points

Award criterion "Project realisation"

The qualifications of the service provider and the personnel deployed have a significant influence on the level of contract fulfilment. The organisation, qualifications and experience of the personnel entrusted with the execution of the contract (Section 58 (2) No. 2 VgV) and the quality assurance measures (Section 58 (2) No. 3 VgV) can therefore serve as award criteria. In this case, they may not already be assessed as suitability criteria (Section 46 (3) No. 6 VgV).

Recommended weighting

- In the case of upstream planning competitions or commissioned solution proposals: 35 - 50 per cent (see evaluation matrix in Tables 6 and 7)
- without a planning competition or without commissioned solution proposals: 70 - 100 per cent (see evaluation matrix in Table 8)

Recommended point spread

Point spread analogue to the school grading system with linear point allocation from 1 to 5

Award criterion "Fee"

In order to be able to determine the most cost-effective tender exclusively on the basis of qualitative award criteria, it is advisable to specify fixed prices for the fee (Section 58 (2) sentence 3 VgV). To this end, instead of specifying a concrete fixed price, the contracting authority can stipulate in abstract terms that the fee will be determined after completion of the planning services in accordance with the HOAI. In this way, the client's overriding interest in high-quality planning is taken into account and the price-performance ratio is used without restriction to determine the most cost-effective tender in the performance competition.³¹

If no use is made of specified fixed prices for the fee, the fee must be provided as an award criterion. It should be noted that architectural services are to be awarded "on a competitive basis" and the main award criterion should be "quality" (explanatory memorandum to Section 76 (1) VgV). The fee must therefore not be given any overriding weight.

The award of the contract to the most economically advantageous tender is ensured with a low weighting of the fee by the fact that the award criteria must generally be performance-related. This is the case, for example, with criteria such as order-related organisation,

³¹ Müller-Wrede: VgV/UVgO including VergStatVO. Commentary, Cologne, 2017, Section 76 VgV para. 63 f.

This is the case in terms of the qualifications and experience of the personnel entrusted with the execution or the methodology used to track deadlines and costs.

Although the planning fee, in relation to the life cycle costs of a building, is generally only two per cent, the quality of the planning is crucial to how economically and qualitatively the building can be constructed and used during its life cycle. A "favourable" fee offer often results in "uneconomical" procurement, or: whoever plans cheaply, builds expensively.

Recommended weighting³²

- In the case of upstream planning competitions or commissioned solution proposals: generally up to 20; deviations possible in individual cases (see evaluation matrix Tables 6 and 7)
- without planning competition or without commissioned solution proposals: generally up to 20; deviations possible in individual cases (see evaluation matrix in Table 8)

Recommended point spread

Point spread of the fee offers according to the differences in the total fee offered

³² If the recommendation for the fee weighting is deviated from in individual cases, this leads to corresponding deviations in the weighting of the award criteria "planning quality" and "project realisation".

Fig. 6: Possible evaluation matrix for negotiated procedures with upstream planning competition. If necessary, supplement with task-specific criteria

Applicants must answer the following questions during the interview:		Weighting Percentage share	Applicants Point spread	Applicants Valuation number = Weighting * Points	Reasons for awarding points
1. PLANNING QUALITY 35 -		50			
11	Placement in the planning competition	35 - 50			
12	Willingness to further develop the design of the competition entry	0 - 5			
2. PROJECT REALISATION 35 -		50			
21	Project organisation	5 - 10			
22	Project team	5 - 10			
23	On-site presence during construction	5 - 15			
24	Cost, quality, scheduling and follow-up management (weight sub-criteria separately if necessary)	10 - 15			
3. HONORARY		usually up to 20; deviations possible in individual cases			
31	Total fee including ancillary costs and hourly rates with factor 0.5	usually up to 20; deviations possible in individual cases			
RESULT OF THE SCORING		100			

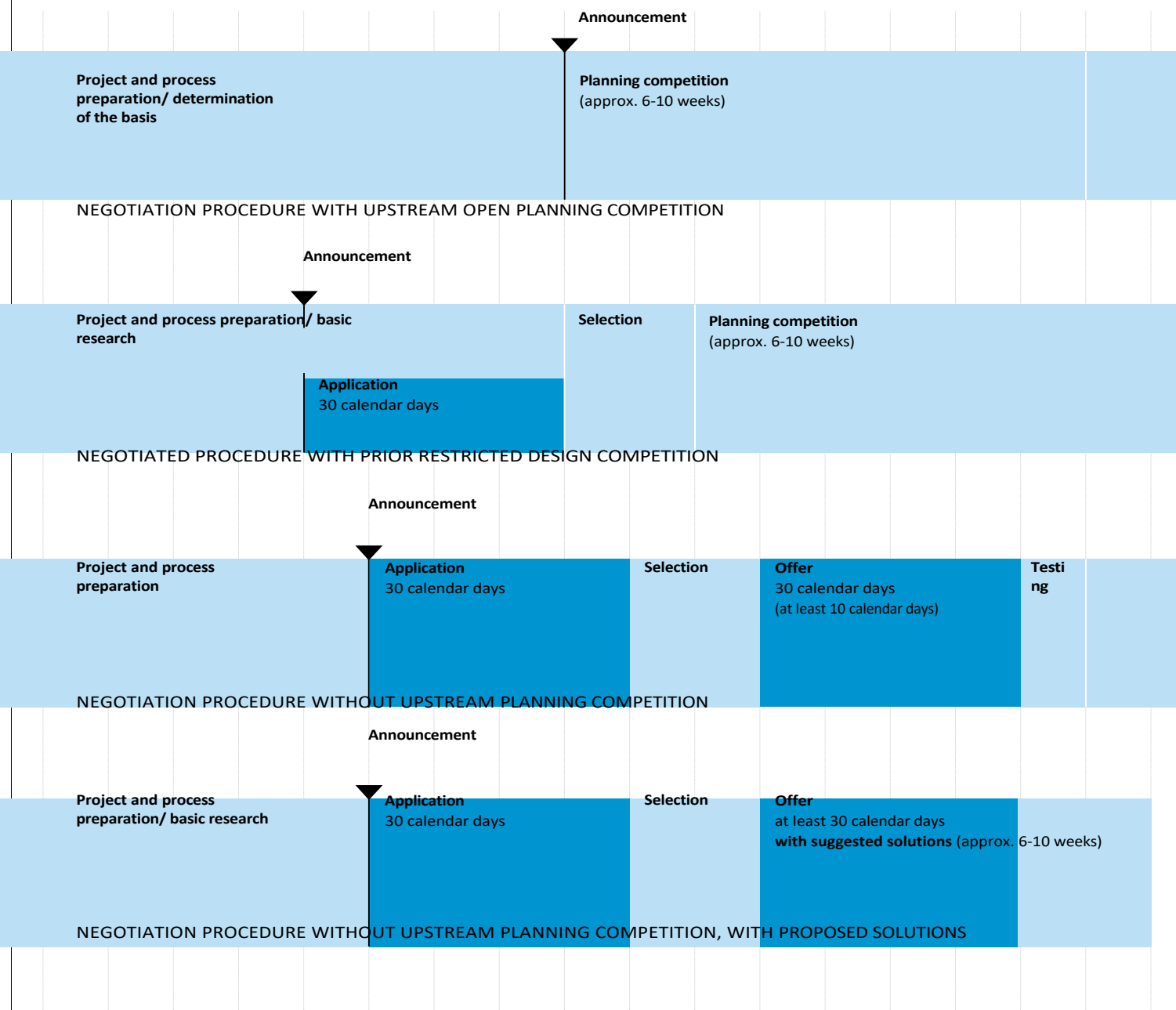
Fig. 7: Possible evaluation matrix for negotiation procedures with proposed solutions

Applicants must answer the following questions during the interview:		Weighting Percentage share	Applicants Point spread	Applicants Valuation number = Weighting * Points	Reasons for awarding points
1. PLANNING QUALITY 35 -		50			
11	Assessment of the proposed solutions	35 - 50			
2. PROJECT REALISATION 35 -		50			
21	Project organisation	5 - 10			
22	Project team	5 - 10			
23	On-site presence during construction	5 - 10			
24	Cost, quality, deadline and follow-up management (weight sub-criteria separately if necessary)	10 - 15			
3. HONORARY		usually up to 20; deviations possible in individual cases			
31	Total fee incl. additional costs and hourly rates with factor 0.5	usually up to 20; deviations possible in individual cases			
RESULT OF THE SCORING		100			

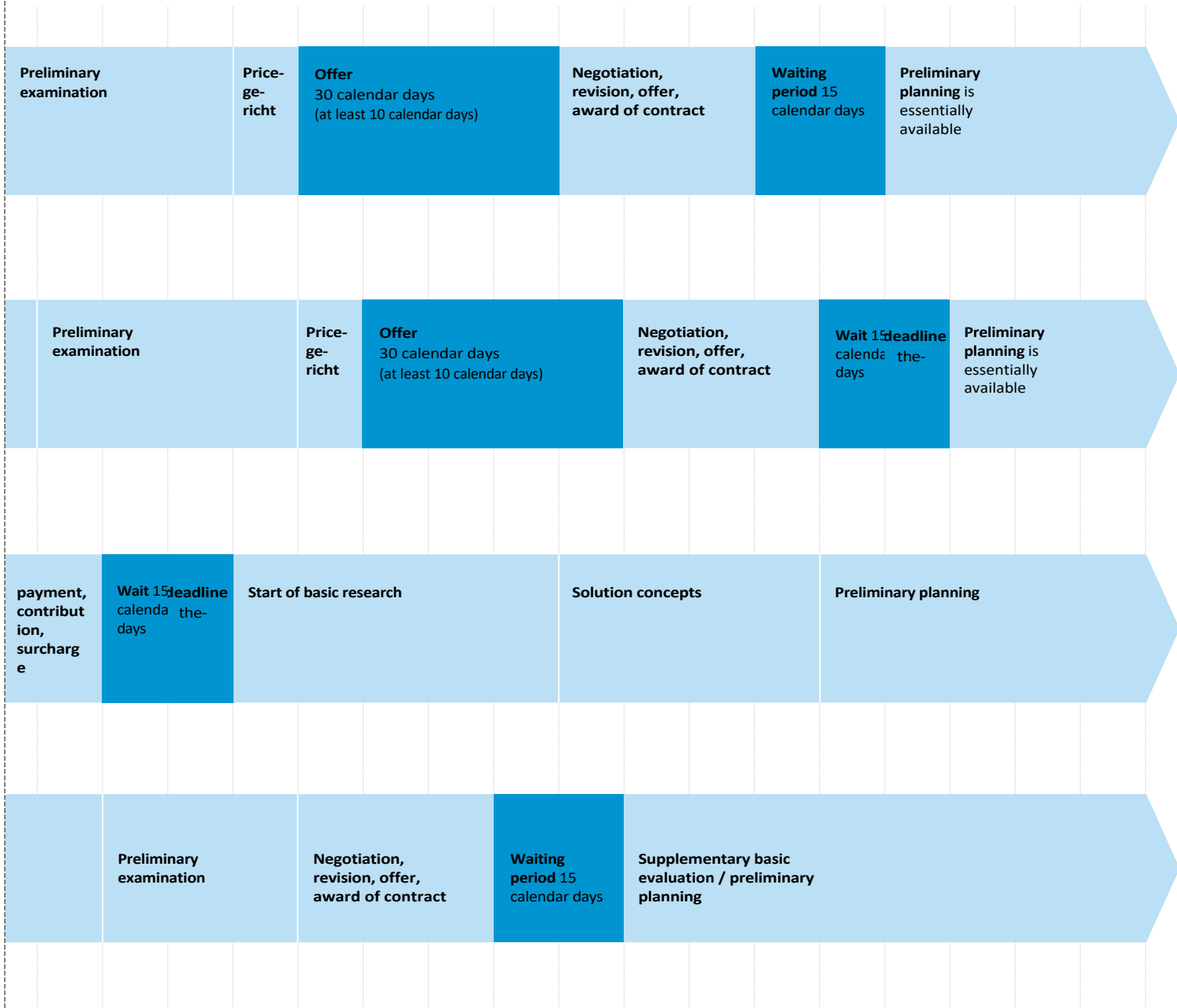
Fig. 8: Possible evaluation matrix for negotiated procedures without a design competition / without proposed solutions.

Applicants must answer the following questions during the interview:		Weighting Percentage share	Applicants Point spread	Applicants Valuation number = Weighting * Points	Reasons for awarding points
1. PROJECT REALISATION 70 -		100			
11	Project organisation	10 - 20			
12	Project team	10 - 20			
13	On-site presence during construction	20 - 30			
14	Cost, quality, deadline and follow-up management (weight sub-criteria separately if necessary)	20 - 30			
2. HONORARY		generally up to 20; deviations possible in individual cases			
21	Total fee incl. additional costs and hourly rates with factor 0.5	usually up to 20; deviations possible in individual cases			
RESULT OF THE SCORING		100			

Appendix: Exemplary time schedule for award procedures



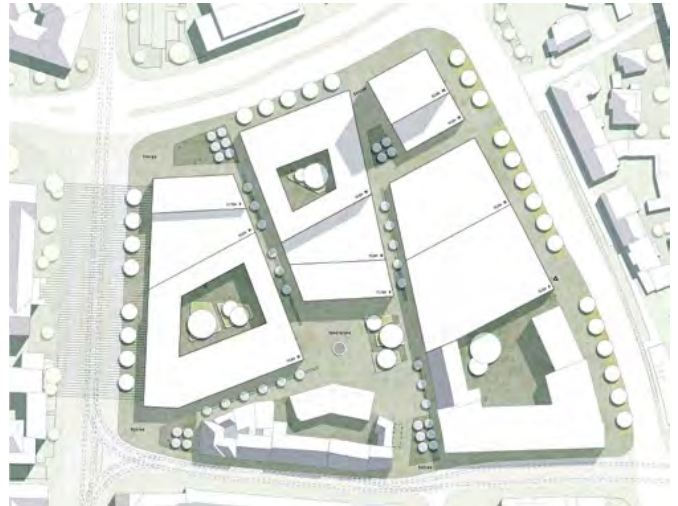
Variable time periods specified
by the VgV





GOOD EXAMPLES OF PLANNING COMPETITIONS

TYPE OF PROCEDURE	Open, two-phase realisation competition according to RPW
AUSLOBER	Free State of Thuringia, City of Jena
GROSS FLOOR AREA	18.500 m ²
CONSTRUCTION VOLUME KG 300 - 500 (GROSS) ACCORDING TO THE TENDER	69.5 million € 10.1 million car park and outdoor facilities
SELECTION OF PARTICIPANTS	open competition, no selection of participants
NUMBER OF PARTICIPANTS	1. Phase: 88 2. Phase: 19
DATE OF PUBLICATION	10/2016
DATE OF THE DECISION	4/2017
COMPETITION SUM (NET)	60.000 €
FIRST PRIZE WINNER	CODE UNIQUE Architekten, Dresden and Querfeld Eins Landschaft Städtebau Architektur, Dresden



State parliament extension and civic park, Düsseldorf

TYPE OF PROCEDURE	Open two-phase building and open space planning realisation competition according to RPW with open space planning ideas section
AUSLOBER	President of the State Parliament of North Rhine-Westphalia and Lord Mayor of the State Capital Düsseldorf
GROSS FLOOR AREA	max. 18,000 m ²
CONSTRUCTION VOLUME KG 300 - 400 (GROSS) ACCORDING TO THE TENDER	No specifications in the competition
SELECTION OF PARTICIPANTS	open competition
NUMBER OF PARTICIPANTS	1. Phase: 34 2. Phase: 9
DATE OF PUBLICATION	1/2020
DATE OF THE DECISION	11/2020
COMPETITION SUM (NET)	438.000 €
FIRST PRIZE WINNER	Realisation part: Schulz und Schulz Architekten, Leipzig with r + b landschaft s architektur, Dresden Ideas section: Kim Nalleweg Architekten, Berlin, capat-tistaubach urbane landschaften, Berlin



Fire station, Radebeul

TYPE OF PROCEDURE	Non-open realisation competition according to RPW
AUSLOBER	Large district town of Radebeul
GROSS FLOOR AREA	1.200 m ²
CONSTRUCTION VOLUME KG 300 - 400 (GROSS) ACCORDING TO THE TENDER	1.9 million €
SELECTION OF PARTICIPANTS	Proof of professional licence and insurance cover, selection of the desired number by lottery
NUMBER OF PARTICIPANTS	desired: min. 25 - max. 35 actual: 27
DATE OF PUBLICATION	4/2017
DATE OF THE DECISION	10/2017
COMPETITION SUM (NET)	25.000 €
FIRST PRIZE WINNER	Judge Musikowski, Berlin



Refurbishment, modernisation and extension of the listed central library, Mönchengladbach

TYPE OF PROCEDURE	Open, two-phase realisation competition according to RPW
AUSLOBER	City of Mönchengladbach
GROSS FLOOR AREA	No specifications in the tender
CONSTRUCTION VOLUME KG 300 - 400 (GROSS) ACCORDING TO THE TENDER	No specifications in the tender
SELECTION OF PARTICIPANTS	open competition, no selection of participants
NUMBER OF PARTICIPANTS	1. Phase: 58 2. Phase: 8
DATE OF PUBLICATION	5/2018
DATE OF THE DECISION	9/2018
COMPETITION SUM (NET)	70,000, including €35,000 in prizes and recognition and €35,000 in expense allowances for participants in the first phase.
FIRST PRIZE WINNER	Schrammel Architekten Stadtplaner, Augsburg with Ossi Alto Lars Project Landschaftsarchitekt, Augsburg



Martin-Behaim-Gymnasium, Nuremberg

TYPE OF PROCEDURE	Open, two-phase realisation competition according to RPW
AUSLOBER	WBG KOMMUNAL GmbH, Nuremberg
GROSS FLOOR AREA	No specifications in the tender
CONSTRUCTION VOLUME KG 300 - 400 (GROSS) ACCORDING TO THE TENDER	90 million €
SELECTION OF PARTICIPANTS	open competition, no selection of participants
NUMBER OF PARTICIPANTS	1. Phase: 68 2. Phase: 17
DATE OF PUBLICATION	8/2019
DATE OF THE DECISION	3/2020
COMPETITION SUM (NET)	315,000, including € 165,000 i n prizes and recognition, € 150,000 in expense allowances for participants in the 2nd phase
FIRST PRIZE WINNER	Caramel Office, Vienna with YEWO LANDSCAPES, Vienna



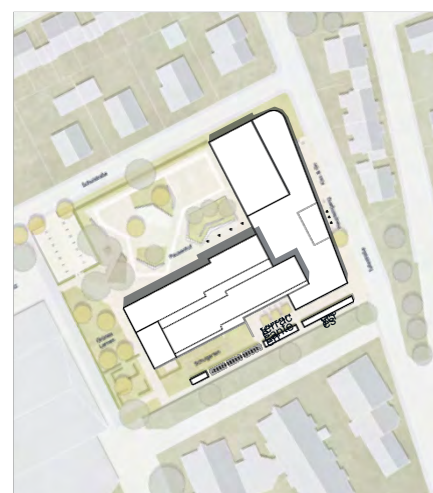
Research building Helmholtz Institute Jena

TYPE OF PROCEDURE	Open realisation competition according to RPW
AUSLOBER	Free State of Thuringia
GROSS FLOOR AREA	1.125 m ²
CONSTRUCTION VOLUME KG 300 - 400 (GROSS) ACCORDING TO THE TENDER	8 million €
SELECTION OF PARTICIPANTS	open competition, proof of suitability for negotiated procedures after the competition has been concluded
NUMBER OF PARTICIPANTS	30
DATE OF PUBLICATION	12/2017
DATE OF THE DECISION	4/2018
COMPETITION SUM (NET)	36.000 €
FIRST PRIZE WINNER	Osterwold°Schmidt Explander Architects BDA, Weimar



Conversion of community school building into a primary school and construction of a new single-field sports hall and school canteen, Bietigheim

TYPE OF PROCEDURE	Non-open realisation competition according to RPW
AUSLOBER	Municipality of Bietigheim
GROSS FLOOR AREA	approx. 5,500 m ²
CONSTRUCTION VOLUME KG 300 - 400 (GROSS) ACCORDING TO THE TENDER	No specifications in the tender
SELECTION OF PARTICIPANTS	Proof of professional title architect, Selection of the desired number by lottery
NUMBER OF PARTICIPANTS	desired: min. 5 - max. 15 set: 2 actual: 15
DATE OF PUBLICATION	2/2021
DATE OF THE DECISION	7/2021
COMPETITION SUM (NET)	58.000 €
FIRST PRIZE WINNER	arabzadeh.schneider.wirth architekten, Nürtingen/ Stuttgart with faiss landschaftsarchitektur, Nürtingen



Refurbishment and extension of Mettnau lido, Radolfzell on Lake Constance

TYPE OF PROCEDURE	Non-open realisation competition according to RPW
AUSLOBER	City of Radolfzell on Lake Constance
GROSS FLOOR AREA	1.400 m ²
CONSTRUCTION VOLUME KG 300 - 400 (GROSS) ACCORDING TO THE TENDER	No specifications in the tender
SELECTION OF PARTICIPANTS	Proof of professional licence, Selection of the desired number by lottery
NUMBER OF PARTICIPANTS	desired: 25 set: 10 actual: 23
DATE OF PUBLICATION	2/2019
DATE OF THE DECISION	7/2019
COMPETITION SUM (NET)	50.000 €
FIRST PRIZE WINNER	Schoener und Panzer Architekten BDA, Leipzig with Rudolph Langner. Station C23. architects and landscape architects



Development and renovation of the Wolfskeelhalle (1970s) into a meeting centre, Reichenberg

TYPE OF PROCEDURE	Non-open realisation and ideas competition according to RPW
AUSLOBER	Reichenberg market
GROSS FLOOR AREA	2.000 m ²
CONSTRUCTION VOLUME KG 300 - 400 (GROSS) ACCORDING TO THE TENDER	approx. € 7.4 million
CRITERIA FOR PARTICIPANT SELECTION	Reference project building construction, fee zone III and not older than 9 years Reference outdoor installations, fee zone III and not older than 9 years Selection of the desired number by lottery
NUMBER OF PARTICIPANTS	desired: max. 20 set: 5 actual: 12
DATE OF PUBLICATION	9/2019
DATE OF THE DECISION	3/2020
COMPETITION SUM (NET)	63.000 €
FIRST PRIZE WINNER	Benkert Schäfer Architects, Munich with GTL Michael Triebswetter Landscape architect, Kassel



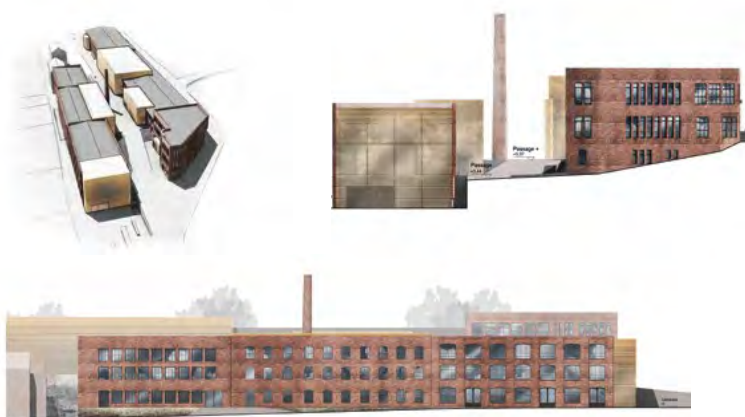
Conversion and refurbishment of residential complex "An der Burg", Mühlhausen

TYPE OF PROCEDURE	Non-open realisation competition according to RPW
AUSLOBER	City of Mühlhausen and Städtische Wohnungsgesellschaft mbH Mühlhausen (SWG)
LIVING AREA	6.250 m ²
CONSTRUCTION VOLUME KG 300 - 400 (GROSS) ACCORDING TO THE TENDER	11.25 million €
CRITERIA FOR PARTICIPANT SELECTION	Proof of professional title architect, Selection of the desired number by lottery
NUMBER OF PARTICIPANTS	desired: 20 actual: 12
DATE OF PUBLICATION	3/2021
DATE OF THE DECISION	7/2021
COMPETITION SUM (NET)	134.000 €
FIRST PRIZE WINNER	KUG-Architekten, Kodisch und Gasmann, Munich with Lex Kerfers_Landschaftsarchitekten und Stadtplaner, Bockhorn near Erding



Conversion, refurbishment and extension of the "Alte Bücher- fabrik", Engelskirchen

TYPE OF PROCEDURE	Non-open realisation competition according to RPW
AUSLOBER	Municipality of Engelskirchen
GROSS FLOOR AREA	8.077 m ²
CONSTRUCTION VOLUME KG 300 - 400 (GROSS) ACCORDING TO THE TENDER	No specifications in the competition
CRITERIA FOR PARTICIPANT SELECTION	Reference project with comparable construction task within the last 10 years in the order of at least € 2 million in chargeable net construction costs KG 300 and 400 Selection of the desired number by lottery
NUMBER OF PARTICIPANTS	desired: 15 set: 6 actual: 15
DATE OF PUBLICATION	11/2018
DATE OF THE DECISION	5/2019
COMPETITION SUM (NET)	125,000 and expense allowance of 3,500 € per participant
FIRST PRIZE WINNER	SUPERGELB ARCHITEKTEN, Cologne



Bailey Park residential development, Hamelin

TYPE OF PROCEDURE	Non-open realisation competition according to RPW
AUSLOBER	HWG - Hamelner Wohnungsbaugesellschaft mbH
GROSS FLOOR AREA	approx. 8,000 m ²
CONSTRUCTION VOLUME KG 300 - 400 (GROSS) ACCORDING TO THE TENDER	approx. € 7 million
SELECTION OF PARTICIPANTS	Participation competition according to minimum criteria, selection of the desired number by lottery
NUMBER OF PARTICIPANTS	desired: max. 15 set: 4 actual: 11
DATE OF PUBLICATION	10/2018
DATE OF THE DECISION	4/2019
COMPETITION SUM (NET)	36.000 €
FIRST PRIZE WINNER	RTW Architects, Hanover



Shopping centre with residential development and family centre, Munich-Neuaubing

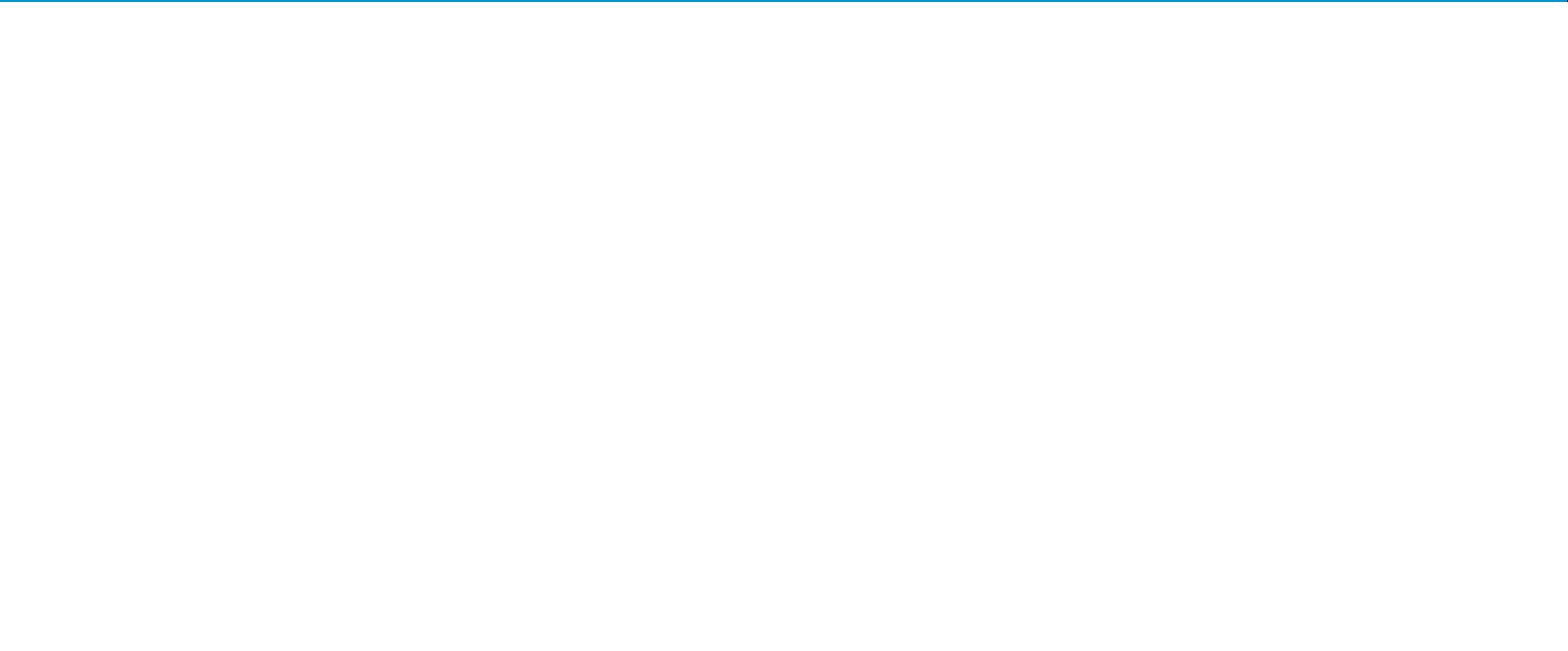
TYPE OF PROCEDURE	Non-open realisation competition with urban planning ideas part according to RPW
AUSLOBER	GWG Städtische Wohnungsgesellschaft München mbH
GROSS FLOOR AREA	Shopping centre approx. 3,340 m ² , social services approx. 1,000 m ² , family centre and daycare centre approx. 1,450 m ² , subsidised and privately financed housing approx. 4.000 m ²
CONSTRUCTION VOLUME KG 300 - 400 (GROSS) ACCORDING TO THE TENDER	No specifications in the tender
SELECTION OF PARTICIPANTS	Reference fee zone 3 Selection of the desired number by lottery
NUMBER OF PARTICIPANTS	desired: 8 set: 2 actual: 8
DATE OF PUBLICATION	6/2020
DATE OF THE DECISION	12/2020
COMPETITION SUM (NET)	70.000 €
FIRST PRIZE WINNER	N-V-O Nuyken von Oefele Architekten BDA und Stadtplaner, Munich and MLA+, Berlin with Treib- haus Landschaftsarchitektur Berlin/Hamburg



Day-care centre on the Oxford-Quartier conversion site, Münster

TYPE OF PROCEDURE	Non-open realisation competition according to RPW
AUSLOBER	City of Münster
GROSS FLOOR AREA	1.200 m ²
CONSTRUCTION VOLUME KG 300 - 400 (GROSS) ACCORDING TO THE TENDER	2.49 million €
SELECTION OF PARTICIPANTS	Proof of professional title architect and professional liability insurance Selection of the desired number by drawing lots Applicant/bidding consortia are authorised
NUMBER OF PARTICIPANTS	desired: min. 15 - max. 15 set: 5 actual: 15
DATE OF PUBLICATION	7/2020
DATE OF THE DECISION	3/2021
COMPETITION SUM (NET)	32.600 €
FIRST PRIZE WINNER	heimspiel architects, Münster with planner group, Oberhausen





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Notes

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