

German-Regulation-on-the-Award-of-Public-Contracts-VgV
Competitive-tender
Cost-effectiveness
Invitations-to-tender
Transparency
Environmental-compatibility
Expression-of-interest
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GWB
Guide
Officer-responsible-for-the-commission
Contract-negotiations
Shortlist
Terms-of-reference
Terms-of-payment
Consultancy-sector
Suitability
Integrity-agreement
EU-threshold
Follow-on-contract
German-Act-against-Restraints-of-Competition

Guide to the procurement of consulting services

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As a federally owned enterprise, GIZ supports the German Government in achieving its objectives in the field of international cooperation for sustainable development.

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Eschborn, September 2017

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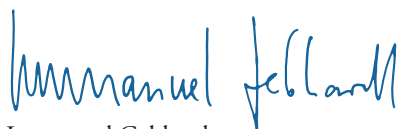
Preliminary remarks

As a service provider with a global profile, GIZ supports the German Government in achieving its objectives in the field of international cooperation for sustainable development. The German Government, represented by the Federal Ministry for Economic Cooperation and Development (BMZ) and the Federal Ministry of Finance, established GIZ as a legal entity under private law to ensure that its commissions are implemented efficiently and cost-effectively. GIZ's wide-ranging expertise is in demand around the globe – with the German Government, European Union institutions, the United Nations and governments of other countries.

Whenever it makes sense and is cost-effective to do so, GIZ works with suitable private-sector companies, government bodies, universities and specialised institutions to help it implement development projects and programmes. GIZ sees the private sector, and the consulting sector in particular, as a close and indispensable partner. Consulting firms are part of the 'GIZ value chain'. They help GIZ to achieve the best possible results for its clients with an optimal cost-performance ratio. GIZ holds competitive tenders to ensure that all its procurement activities are cost-effective, transparent, legally compliant and verifiable and that all bidders are treated fairly.

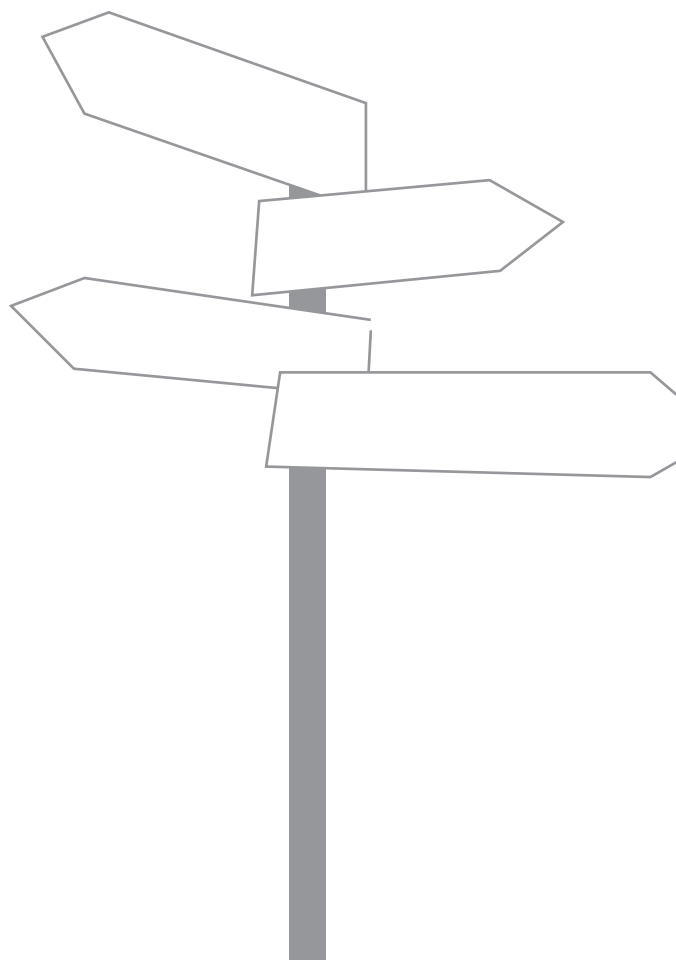
This guide has been created to provide an overview of our procedures to consulting firms that may be interested in bidding for GIZ contracts. It describes the various phases involved – from the initial approach and the actual tender process to implementation of the contract, invoicing and reporting. It sets out the rules and procedures applied by GIZ when procuring services from consulting firms and explains how we work with our suppliers at project level. The guide is also aimed at GIZ Head Office and field staff whose role involves dealing with external consulting firms.

We look forward to working with you and wish you every success in future tenders.



Immanuel Gebhardt

Procurement and Contracting Division



1. Types of procedure

As a public contracting authority, GIZ uses the following procedures when awarding contracts above the EU threshold (2017: EUR 209,000).

- a. Open procedure
- b. Restricted procedure
- c. Negotiated procedure

1.1 Open procedure

In the open procedure, GIZ invites bids from an unlimited number of consulting firms. The Europe-wide invitation to tender is published in the Tenders Electronic Daily (TED), which is the online version of the supplement to the Official Journal of the European Union (OJEU). The minimum period for submitting bids is 35 days after the date on which the contract notice was sent, although this may be reduced to 15 days in appropriately justified cases. GIZ may specify a longer bid submission period if needed. The open procedure involves just one step and is therefore the quickest of the three procedures used by GIZ.

Negotiations over bids are not permitted in this procedure. GIZ may only request clarification of a bid or of the bidder's suitability.

1.2 Restricted procedure

In all cases, GIZ may use this two-step procedure as an alternative to the open procedure. The main feature of the restricted procedure is that the Europe-wide procurement notice is followed by a public call for competition, after which only those consulting firms deemed suitable are invited to submit bids. GIZ may choose from the outset to limit the overall number of candidates invited to submit bids, although there must be at least five. The period of submission for requests to participate and bids comprises at least 30 days in each case. The period of submission commences on the day after the date on which the contract notice was sent. In justified cases, the period of submission may be reduced by 15 or 10 days.

As in the open procedure, negotiations over bids are not permitted.

1.3 Negotiated procedure with a call for competition

Under certain circumstances, GIZ may opt for the negotiated procedure with a Europe-wide call for competition, e.g. a) if the contract involves providing design or innovative solutions or b) if the contract cannot be awarded without prior negotiations because of the nature, complexity or scope of the service. In this procedure, GIZ first invites requests to participate from an unlimited number of consulting firms. This procedure is generally divided into three steps:

- call for competition
- initial submission of bids
- negotiations leading to final bids

The period for submitting requests to participate (i.e. step 1) is at least 30 days from the day after the date on which the contract notice was sent, although this may be reduced to at least 15 days in appropriately justified cases. Following assessment of the requests to participate on the basis of predefined criteria, GIZ selects suitable consulting firms and invites them to submit bids (step 2). GIZ enters into negotiations with the bidders on their initial bids (step 3) and any subsequent bids, but not on their final bids. The negotiations may cover the entire contents of the bid but not the minimum requirements and contract award criteria specified by GIZ in the procurement documents. In other words, they may address technical aspects of the bid or the price, or they may address both technical issues and pricing. The purpose of these negotiations is to reach a position where the service is provided cost-effectively, in a way that best meets the identified needs and in accordance with the terms of reference and input specifications.

GIZ may choose to award the contract on the basis of the initial bids if it reserved the right to do so in the contract notice or the invitation to confirm interest, the bids received meet GIZ's needs in full (as set out in the terms of reference), and there is no need for negotiations.

1.4 Eligibility criteria for consulting firms

GIZ assesses the eligibility of candidates or bidders on the basis of predefined selection criteria and the grounds for exclusion specified in sections 123 and 124 of the German Act against Restraints of Competition (GWB). For every competitive tender, the assessment grid to be used for selection purposes is published together with the tender documents. For restricted and negotiated procedures, GIZ also specifies weighted criteria such as reference projects and minimum turnover figures. Candidates are generally asked to provide up to ... reference projects. The minimum turnover requirement varies depending on the contract in question and is generally in line with the estimated contract value. When setting this figure, GIZ also takes account of the company's policy of working with small and medium-sized enterprises (SMEs).

In the case of negotiated procedures with a call for competition, at the end of step 1 (call for competition) GIZ invites bids to be submitted only from those candidates which have demonstrated their eligibility on the basis of the weighted selection criteria. Invitations to tender are sent to the three or five highest-ranked candidates (provided that GIZ gave advance notice of this arrangement in the tender documents).

2. Competitive tender

2.1 Publication of competitive tender

As a public contracting authority, GIZ publishes contract notices for contracts above the EU threshold first and foremost on the EU's central procurement platform, TED, which is a supplement to the Official Journal of the EU (OJEU). 48 hours after the contract notice is first published on TED, details of the tender are published on GIZ's own procurement platform at www.giz.de/en/workingwithgiz/bidding_procurement.html. All award procedures are also published at bund.de and where applicable in relevant trade publications together with a brief outline of the associated project.

2.2 Tender documents

Potential candidates/bidders can download the complete set of documents for all current tenders from GIZ's procurement platform and use the 'Questions from tenderers and corresponding answers' document on the GIZ website to resolve any queries they may have.

The list of tender documents generally includes:

1. Terms and conditions for application
2. General terms and conditions of contract ("Terms and Conditions") for supplying services and work (2014)
3. Terms of reference
4. Contract
5. Eligibility declaration by applicants (open procedure)
6. Grid for assessing the eligibility of consulting firms
7. Requirements for layout of price bid
8. Price schedule
9. Technical Assessment Grid of Offers
10. Declaration of integrity
11. Covering letter for bid
12. Specimen: 'Association'

In addition, GIZ provides all candidates/bidders with other documents that they may need in order to deliver the services in question, e.g. background papers and General agreements.

2.2.1 Terms and conditions for application of GIZ for the award of contracts for services and work

Unless stipulated otherwise in a particular tender, the procedure is subject to GIZ's terms and conditions for application (downloadable together with the tender documents). The terms and conditions for application can also be downloaded from:

<https://www.giz.de/en/downloads/giz2018-bewerbungsbedingungen-dienstleistungen-en.pdf>

In particular, the terms and conditions for application cover:

- declarations of eligibility and requests to participate
- Timely submission
- two-envelope procedure for bids

- contents of the technical bid and the price bid
- evaluation of requests to participate
- evaluation of bids
- procedural questions

2.2.2 Terms of reference

In terms of the actual services to be provided, the terms of reference (ToRs) are the key element of every contract and therefore included with the tender documents. The ToRs specify the nature and quantity of the required inputs and are the basis on which consulting firms will prepare their bids. The object of the contract is formulated as clearly and exhaustively as possible to ensure that all candidates/bidders have the same understanding of what is required and so that their bids can be compared against each other.

2.2.3 Time limits

For tenders above the EU threshold, the time limits for consulting firms to submit requests to participate and/or bids depends on the procedure. The period of submission begins on the day after the date on which the contract notice was sent. Your request to participate and your bid must be received either by GIZ Postal Services, Building 2 (Room ED 20077), GIZ Eschborn, or if this is closed at the reception desk in Building 1, GIZ Eschborn, by the submission date. GIZ Postal Services is open from Monday to Thursday from 7:30 to 17:00 and on Fridays from 7:30 to 16:00. It is closed on public holidays. The reception desk in Building 1, GIZ Eschborn, is open around-the-clock. The date of GIZ's receipt stamp shall determine whether the bid has been received on time.

GIZ sometimes works with external procurement agents when conducting invitations to tender. In such cases, the tender documents may stipulate alternative arrangements for submitting requests to participate and bids.

The following table shows the usual time limits for the various steps of each procedure. The period of submission for queries may differ from the number of days shown in the table if the tender is urgent or otherwise by agreement with candidates/bidders.

Standard time limit	Open procedure	Restricted procedure	Negotiated procedure
Publication of tender documents	When all documents are ready for the tender		
Questions from tenderers	up to 7 days before submission period expires	up to 7 days before submission period expires	Up to 7 days before submission period expires
Period of submission for requests to participate		at least 30 days	at least 30 days
Time limit for tender submission	at least 35 days	at least 30 days	at least 30 days
Standstill period	at least 15 days	at least 15 days	at least 15 days
Award/contract			

2.2.4 Assessment grid and weightings for the technical evaluation of bids

Bids are rated on their technical merits in accordance with the assessment grid specified in the tender documents. A dedicated assessment grid is produced for each competitive tender. The technical bid generally has a weighting of 70 %, the price bid 30 %.

The technical assessment grid is published together with the tender documents. All bids are assessed on the basis of the categories and weightings set out in the grid. As part of the technical assessment, GIZ may ask bidders to present information outlining the proposed personnel. This is a general requirement for con-

tracts valued at over EUR 2 million. The technical ranking and commercial assessment are combined to produce an overall ranking. The service contract is awarded to the bidder with the highest overall ranking.

2.2.5 Negotiations and contract award decisions

In a negotiated procedure, GIZ may choose either to award the contract on the basis of the initial bids received or to enter into negotiations with bidders (see 1.3). GIZ may choose to negotiate only with the highest-ranked bidders if it reserved the right to do so in the contract notice or in the invitation to confirm interest.

Contracts being awarded by means of a negotiated procedure typically involve design or other complex services, and bids are therefore assessed on the basis of the published criteria. Alternative offers are not permitted.

The decision taken by GIZ either to conduct negotiations with bidders or award the contract on the basis of the initial bids depends on the individual circumstances, e.g. the quality and detail of the initial bids and the prices offered.

GIZ may choose to conduct several rounds of negotiations with bidders in order to improve certain technical aspects or consulting strategies and/or obtain a more favourable price. Negotiations are also conducted in order to make further improvements to the proposed solutions or consulting strategies through a dialogue with bidders.

Price bids must also comply with the terms of reference and the input specifications set out in the ToRs. If there are significant differences between the price bids, or if the anticipated budget is exceeded, GIZ will clarify the differences through a dialogue with the bidders and try to reach agreement on a contract value that remains within the available budget. If a bid price appears to be unusually low for the required services, GIZ will ask the bidder for clarification in accordance with section 60 of the German Regulation on the Award of Public Contracts (VgV).

If the initial bids comply with the terms of reference (technical merit and price), fall within the estimated contract value and precisely meet GIZ's needs in such a way that it would not be cost-effective to conduct negotiations, GIZ will choose to award the contract on the basis of those initial bids.

If negotiations are conducted, the bidders involved will be asked at the end of the negotiations to submit a revised final bid (technical and price). The standard period of submission for final bids is seven days. GIZ will then assess the final bids and produce an overall ranking. The contract is awarded on the basis of this overall ranking.

2.2.6 Notice to unsuccessful bidders (award decision notice)

Unsuccessful bidders are notified once the contract award decision has been made. This notice contains the name of the successful bidder, the reasons for non-selection and the earliest date on which the contract will be signed. The contract with the successful bidder may be signed only after a standstill period of 15 calendar days after the date on which this notice is sent to the bidders. As provided for in section 134 (2) of the German Act against Restraints of Competition (GWB), the standstill period may be reduced to ten calendar days if the award decision notice was issued electronically or by fax. The standstill period begins on the day after GIZ issues the award decision notices.

During this period, unsuccessful bidders may in the first instance lodge a complaint about the decision with GIZ. If this complaint is rejected, an unsuccessful bidder may refer the decision to the public procurement tribunals (*German: Vergabekammer*).

3. Payment methods

3.1 General rules

The current version of the general terms and conditions of contract ('Terms and Conditions') for supplying services and work on behalf of GIZ form an integral part of the contract.

3.2 Contract management

3.2.1 Financial processing of the contract

On the financial side, service contracts are processed by the Financial Services Division on the basis of the contractually agreed currency.

3.2.2 Advance payment

Advance payments are a method of prefinancing services or work that has not yet been delivered. GIZ may ask consulting firms to provide securities before releasing an advance payment.

Contractually agreed advance payments are released in response to a written request from the consulting firm. There is no entitlement to advance payments.

3.2.3 Interim payments

The contract may include a provision for quarterly invoicing and settlement. In such cases, GIZ will settle the amount due on receipt of an invoice from the consulting firm and following confirmation by GIZ's officer responsible for the commission (AV) or cost centre that the required services (or part of the services) have been delivered in full and in accordance with the terms of reference and the stipulated quality criteria.

3.2.4 Final invoice

The AV or the cost centre checks the consulting firm's overall service for the international cooperation measure. The Financial Services Division then checks and settles the final invoice. As stipulated in the individual contract, the consulting firm must present a final report on the implementation of the measure.

4. Defining the working relationship and performance

Consulting firm staff are part of the entire project team. To help them implement the services they have been commissioned to provide, they take part in team meetings and in planning and monitoring workshops. In order to involve the consulting firm in the project, the AV ensures that both sides cooperate as equals and that there is a consistent line of communication between them. This guarantees that the international cooperation project presents a uniform image on behalf of the client.

GIZ and the contractor ensure that consulting firm staff can take part in GIZ sectoral events (especially sector networks and expert meetings). Consulting firm staff make their own contributions to product development and knowledge management within their sector.

In accordance with the agreed schedule, the contractor submits any reports or statements that are stipulated in the contract for approval by the AV.

4.1 Measuring progress, managing delays, modifying the contract

Shortly after the contract has been signed, the AV contacts the successful consulting firm to discuss the start of the implementation process.

While the consulting firm's staff are working on the project, they meet regularly with the AV to exchange information about the progress made towards implementation. During this period, the AV is the main point of contact for any questions about implementation or about project-related aspects of the contract. The AV and the contractor work together to clarify any outstanding technical points and decisions.

Any changes to the planned implementation process that affect the contract are jointly agreed by the AV and the contractor. The AV will then contact the Procurement and Contracting Division with a proposal for an amendment or supplement to the contract. This must be done in good time before the contractor starts work. The designated contract manager can advise on any proposed changes before they are put into effect. The contract manager clarifies any action that may be required on the commercial side with the AV and agrees on any contractual changes with the contractor in writing.

4.2 Responsibility of the contractor for implementation

The consulting firm's staff can request and make use of contractually agreed inputs (e.g. short-term experts) as appropriate at each stage of the project and as provided for in the contract. As part of the consulting firm's overall responsibility for implementation, it is responsible for drawing up the terms of reference for any short-term experts, selecting those experts and formally approving the services they provide. The consulting firm is responsible to GIZ for the results achieved.

4.3 Overall performance, final report

On completion of an international cooperation measure, the AV formally approves the overall performance within four weeks and submits a notice to the Financial Management – Contracts section (Financial Services Division) confirming that the contractual obligations have been fulfilled.

The AV documents any disruptions or reduced performance so that they can be taken into account when settling the final invoice. The AV is responsible for the final report to BMZ (or other client).



5. Follow-on phases

5.1 Maintaining the partnership with the consulting firm during follow-on phases

GIZ receives commissions from its own clients to implement time-limited projects. In many cases, once a project phase has been completed, the client commissions GIZ to implement a subsequent phase. In this context, to ensure that it can continue to deliver high-quality services during such follow-on phases, GIZ may be interested in engaging the same consulting firm that won the initial contract to help it implement the new phase(s). This arrangement is only admissible if the possibility of further cooperation with the successful firm was established in the initial tender. If the conditions for continued partnership are in place (e.g. continuity of personnel and strategy, successful completion of the previous phase), GIZ may offer a contract to the consulting firm with which it implemented the first phase rather than conducting a new Europe-wide tender. It is important to note that GIZ is under no obligation to offer a contract to the same firm.

5.2 Responsibilities for contracts to provide services during follow-on phases

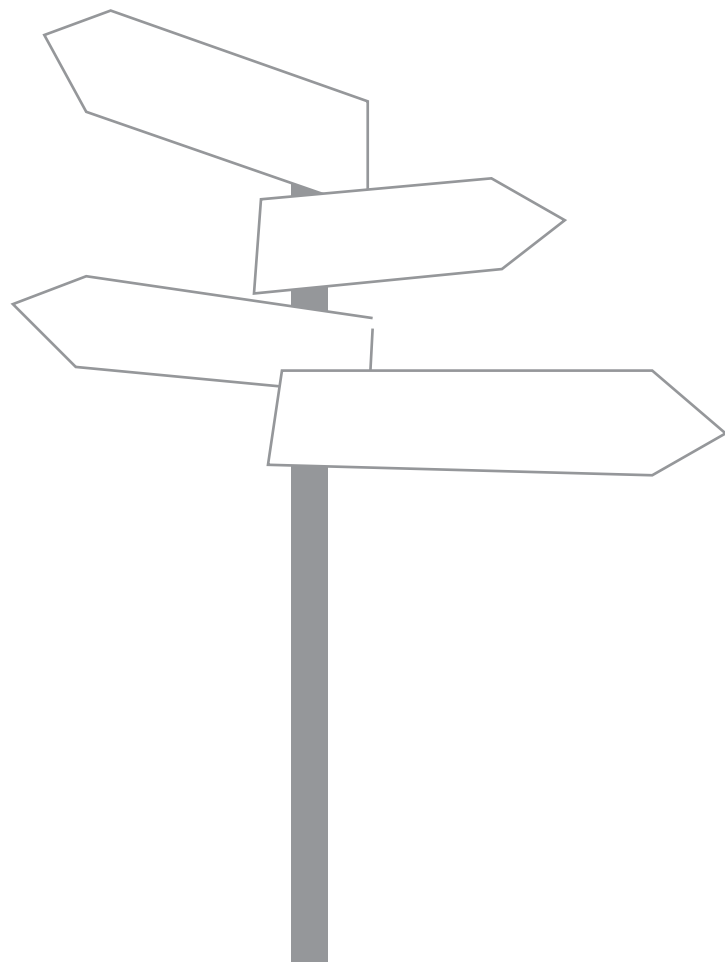
The scope of any follow-on contract is estimated as realistically as possible by the AV (or cost centre) and incorporated as an option into the terms of the reference for the initial tender. If it appears likely, towards the end of the first implementation phase, that GIZ will be commissioned to implement a follow-on phase, the AV will ask the designated contract manager to check whether the conditions for continued partnership with the consulting firm are in place.

Potential follow-on contracts are usually referred to the Procurement and Contracting Division by the AV (or cost centre) eight months before the existing contract is due to expire.

The AV (or cost centre) is responsible on the technical side for preparing and conducting the contractual negotiations. The Procurement and Contracting Division is responsible for checking all the commercial aspects of the negotiations and the follow-on contract.

6. Contracts with consulting firms below the EU threshold (currently EUR 209,000)

GIZ also conducts tenders for contracts below the EU threshold. The principles of transparency, cost-effectiveness, competition and the equal treatment of tenderers enshrined in procurement law apply in the same way to sub-threshold tenders. In this way, GIZ supports both equality of access to its supply chain and cost-effective procurement in the same measure. Subject to the above principles, GIZ may procure services under sub-threshold contracts by means of public or restricted invitations to tender with/without a call for competition or negotiated procedures. These are simplified procedures that can be implemented by GIZ much more quickly and overall more efficiently.



7. Integrity agreement

GIZ attaches a great deal of importance to integrity and the prevention of corruption. GIZ's values and integrity system and the processes for awarding contracts to consulting firms, suppliers, construction companies and the recipients of financial contributions involve many obligations for GIZ, its staff, contractors and partners.

The purpose of the integrity agreement between GIZ and its contractors is to:

- present this 'values and integrity' system to GIZ's contractors in a condensed format with references to the original texts;
- oblige GIZ's contractors to observe the contents of this integrity agreement and take organisational measures that allow them to communicate these codes of conduct to their staff and subcontractors and monitor compliance; and
- in this way ensure that the contract award process is fair and that the programme/project is implemented in a manner that is compliant with GIZ's Code of Conduct and fosters mutual trust and confidence.

The act of submitting a bid constitutes a declaration by the consulting firm that it is familiar with and respects GIZ's integrity principles. When the contract is signed, GIZ's Code of Conduct become an integral part of the contract.

List of abbreviations

AV	Officer responsible for the commission
BMZ	German Federal Ministry for Economic Cooperation and Development
EU	European Union
TED	Tenders Electronic Daily – the European public procurement journal
TOR	Terms of Reference

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