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**Notice of
Regulations on Contract Awards
for Independent Professional Services
- VOF -
Version 2009**

Promulgated on 18 November 2009

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Notice is given below of the new version of the Regulations on Contract Awards for Independent Professional Services, VOF 2009, drafted under the leading auspices of the Federal Ministry of Economics and Technology together with the Federal Ministry of Transport, Building and Urban Affairs and also with the collaboration of the Committee for Drafting the Regulation on Contract Awards for Independent Professional Services (VOF). It transposes Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts into German law.

The application of VOF shall also continue to be binding in future for contracting authorities under Article 98 of the Act against Restraints of Competition (GWB) by virtue of the relevant provisions of the Public Tender Regulation (VgV). After entry into force of the updated VgV, the application of the new VOF shall be binding for contracting authorities when awarding contracts for independent professional services above the EU thresholds. The VOF version of 16 March 2006 (Federal Gazette No. 91a of 13 May) shall then cease to apply.

The new version of VOF comprises in particular the adjustment of its structure and the chronology of procedure to the Regulations on Contract Awards for Public Works (VOB) and for Public Supplies and Services (VOL), which have also been redrafted. Duplicate provisions contained in VgV and VOF have been removed from VOF and the negotiated procedure to be applied in awarding contracts for independent professional services has been described more clearly in terms of content and sequence. This meets the demand for simplifying procurement law and reducing the number of regulations.

Berlin, 18 November 2009

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Federal Ministry of Economics and
Technology
For the Ministry
Dr Bettina Waldmann

Federal Ministry of Transport, Building and
Urban Affairs
For the Ministry
Ludjet Molitor

**Regulations on Contract Awards
for Independent Professional Services
- VOF -
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Chapter 1

General Provisions

Article 1

Scope of Application

(1) The following rules shall apply for awarding public contracts for independent professional services as specified in Annex I Part A and rendered as part of an independent professional activity or offered in competition with independent professionals and whose subject matter is a task that cannot be described beforehand in clear and exhaustive terms as well as design contests under Chapter 2.

(2) The provisions of VOF are applicable where the estimated contract value is equal to or greater than the threshold amounts for services or design contests without value added tax under Article 2 of the Public Tender Regulation.

(3) In the case of contract awards for services cited in Annex I Part B, only Article 6(2 to 7) and Article 14 shall apply. Contracts for services cited in both Annex I Part A and Annex I Part B shall be awarded in keeping with the regulations for those services whose value accounts for the largest ratio.

Article 2

Principles

(1) Contracts shall be awarded to skilled, efficient and reliable enterprises. No enterprise may be discriminated against.

(2) The participants in an award procedure must be treated equally, unless discrimination is explicitly provided for or permitted under Part Four of the Act against Restraints of Competition (GWB).

(3) Contracts shall be awarded regardless of provider and supplier interests.

(4) Adequate participation shall be afforded smaller office organisations and young professionals.

Article 3

Type of Award

(1) Contracts shall be awarded in negotiated procedure with a prior public invitation to take part (call for competition).

(2) The contracting authority can provide for the negotiated procedure to be organised in separate successive phases, so as to reduce the number of tenders to be negotiated or the award criteria cited in the notice or contractual documents. The notice or the tender documents must indicate whether this option has been chosen.

(3) In the invitation to negotiate, the contracting authority shall inform the selected candidates about the scheduled subsequent course of the procedure.

(4) The contracting authorities may award contracts in negotiated procedure without a call for competition in the following cases:

- a) if for technical or artistic reasons or due to the protection of exclusive rights (e.g. patent, copyright), the contract can only be performed by a specific person,
- b) if following a design contest as described in Chapter 2, the contract must be awarded in keeping with the relevant provisions to the winner or one of the prize-winners of the contest. In the latter case, all prize-winners of the contest must be invited to participate in the negotiations,

- c) if this is absolutely necessary where for urgent compelling reasons which the contracting authorities could not have foreseen the prescribed time limits cannot be adhered to. Circumstances justifying such compelling urgency may in no case be attributable to the conduct of the contracting authorities,
- d) for additional services not provided for either in the project initially awarded or in the contract initially concluded but due to unforeseen circumstances have become necessary to the performance of the services specified therein, provided that the contract is awarded to a person who renders these services,
 - when such additional services cannot be technically or economically separated from the main contract without major inconvenience to the contracting authority or
 - when such additional services, although separable from the performance of the original contract, are essential for its completion.

The total value of the contracts for the additional services may not, however, exceed 50 per cent of the value of the main contract,

- e) in the case of new services consisting in the repetition of similar services assigned by the same contracting authority to the person who was awarded the first contract, provided they conform with a basic project for which the first contract was awarded. The possibility of applying this procedure must already be indicated in the notice for the first project. This procedure may, however, only be applied within three years after conclusion of the first contract.

Article 4

Participants in Award Procedure

(1) Candidates or tenderers may be single or several natural or legal persons that render services under Article 1(1). If candidates are authorised to provide the service in question under the legal provisions of the state where they are domiciled (state of establishment), they may not be rejected solely because they must either be a natural or legal person under the relevant German legal provisions.

(2) Candidates or tenderers can be obliged to provide information on

- whether and how they are connected commercially with enterprises or
- whether and how they cooperate with others in a way that is relevant to the contract,

provided this is not contrary to provisions under professional law.

(3) Candidates or tenderers shall be obliged to provide the name and the professional qualifications of the persons who actually render the service.

(4) If the contract is to be awarded to several tenderers jointly, the contracting authority can demand that these adopt a certain legal status on contract award, where this is necessary for the proper execution of the contract and is not contrary to provisions under professional law.

(5) If a tenderer or candidate has advised the contracting authority or otherwise supported it before the commencement of the procurement procedure, the contracting authorities must ensure that competition is not distorted by the participation of the tenderer or candidate.

(6) A candidate or tenderer must be excluded from participation in an award procedure on the grounds of unreliability if the contracting authority has knowledge that a person whose conduct is attributable to the enterprise, has been legally convicted under:

- a) Article 129 of the Federal Criminal Code – StGB (Formation of Criminal Organisations), Article 129a of StGB (Formation of Terrorist Organisations), Article 129b of StGB (Criminal and Terrorist Organisations Abroad),
- b) Article 261 of StGB (Money Laundering; Concealment of Unlawfully Acquired Assets),

- c) Article 263 of StGB (Fraud), where the criminal offence has been committed against the budget of the European Communities or budgets administered by the European Communities or on their behalf,
- d) Article 264 of StGB (Subsidy Fraud), where the criminal offence has been committed against the budget of the European Communities or budgets administered by the European Communities or on their behalf,
- e) Article 334 of StGB (Offering a Bribe), also in conjunction with Article 2 of the EU Anti-Corruption Act, Section 1 of Article 2 of the Act Against International Corruption, Article 7(2.10) of the Fourth Criminal Code Amendment Act and Article 2 of the Act on Suspending the Statute of Limitation and Equal Treatment of Judges and Employees of the International Criminal Court,
- f) Section 2 of Article 2 of the Act on Combating International Bribery (Bribery of Foreign Public Officials in International Business Transactions) or
- g) Article 370 of the Fiscal Code, also in conjunction with Article 12 of the Common Market Organisations Implementation Act and Direct Payments (MOG), where the criminal offence has been committed against the budget of the European Communities or budgets administered by the European Communities or on their behalf.

A violation of these provisions shall be treated as equivalent to violations of penal provisions in other states. The conduct of a legally convicted person shall be attributed to a candidate or tenderer if he acted responsibly in conducting business on behalf of the candidate or tenderer or if supervisory or organisational fault under Article 130 of the Code of Administrative Offences (OWiG) lies with this person in connection with the conduct of another legally convicted person acting on behalf of the candidate or tenderer.

(7) As evidence that the knowledge under paragraph 6 is incorrect and the cases cited therein do not apply, the contracting authorities shall accept an extract from the Federal Central Criminal Register or an equivalent document from the competent judicial or administrative authority of the state of establishment. If a document or certificate is not issued by the country of establishment or does not cite all the cases provided for in full, this may be replaced by a declaration on oath or a solemn declaration to a competent judicial or administrative authority, a notary or a specially qualified professional organisation in the country of establishment.

(8) Exclusion under paragraph 6 may only be waived on compelling grounds of general interest and if the service cannot be adequately rendered by others or if due to special circumstances of the individual case the violation does not cast doubt on the reliability of the candidate or tenderer.

- (9) Candidates and tenderers can be excluded from participation in the award procedure
- a) who are bankrupt or in liquidation or have suspended their activity or are in a similar situation due to equivalent proceedings provided for under national law,
 - b) have been legally convicted on grounds that cast doubt on their professional reliability,
 - c) have been guilty of grave professional misconduct of which the contracting authority has proof,
 - d) have not met their obligation to make due payments of taxes and contributions to statutory national insurance,
 - e) in the provision of information that may be required under Articles 4, 5 and 10, are guilty of serious misrepresentation or have failed to provide this information without justification.

Article 5

Evidence of Suitability

(1) As evidence of skills, efficiency and reliability (suitability), only documents and information may be demanded that are warranted by the subject-matter of the contract. The contracting authority must take account of the legitimate interests of the candidates or tenderers in protecting their technical, professional or trade secrets, without prejudice to the obligation to maintain professional secrecy.

(2) Evidence under paragraph 4(c) and paragraph 5(b to f and h) must generally be required along with self-declarations under Article 4(9). Grounds must be provided in the documentation for any requests for documents and information in addition to this.

(3) Declarations and evidence that are not submitted before expiry of the tender submission time limit can be subsequently requested by the contracting authorities within an extended time limit to be determined.

(4) As a rule, evidence of the financial and economic standing of the candidate can be furnished in one or several of the following ways:

- a) relevant bank statement or evidence of related professional third-party insurance cover,
- b) presentation of balance sheets or summarised balance sheets where their publication is required under the company law of the state in which the candidate is domiciled,
- c) statement on the total turnover of the candidate and his sales volume for relevant services in the last three financial years.

If a candidate or tenderer cannot provide the evidence demanded by the contracting authority for good reason, he may furnish proof of his financial and economic standing by presenting any other evidence which the contracting authority may consider suitable.

(5) Evidence of professional qualification may be furnished as follows:

- a) where not already provided by means of a professional licence, by means of educational and professional qualifications of the candidate or tenderer and/or the executive personnel of the enterprise, particularly of the person or persons responsible for the services,
- b) by means of a list of the main performances rendered over the last three years citing invoice value, time of performance and the public or private contracting entities for the services,
 - in the case of performances rendered for public contracting entities, by means of a certificate issued or authenticated by the competent authority,
 - in the case of performances rendered for private contracting entities, by means of a certificate issued by the contracting entity; if such a certificate is not available, the candidate may make a simple declaration,
- c) by means of information on technical management,
- d) by means of a declaration providing information on the annual average number of employees of the candidate or tenderer in the last three years and the number of his executives in the last three years,
- e) by means of a declaration providing information on what resources, what machinery and what technical equipment is at the disposal of the candidate or tenderer for the services,
- f) by means of a description of the measures of the candidate or tenderer for quality assurance and of his study and research facilities (e.g. through further training certificates from chambers and associations),

g) if the type of performances to be rendered are complex or if they are intended for an exceptional special purpose, by means of inspection to be conducted by the authorities of the contracting authority or by another competent agency agreeing to act on its behalf from the country where the candidate or tenderer is domiciled; this inspection shall comprise the production capacities and if necessary the study and research facilities of the candidate as well as the measures it takes to assure quality,

h) by providing information on which parts of the contract the candidate or tenderer intends to subcontract.

(6) A candidate or tenderer may also as a member of a grouping of contractors, avail himself of the capacities of other enterprises in the performance of a contract, regardless of the legal status of the relations between him and these enterprises. In this case, he must prove to the contracting authority before contract award that he has the requisite means at his disposal, e.g. by presentation of a relevant undertaking by these enterprises.

(7) If the contracting authorities demand as proof that the candidates or tenderers meet certain quality requirements the submission of certificates from independent quality assurance agencies, these must refer to quality assurance procedures based on the relevant standards and certificates that are certified by agencies that meet European certification standards. Equivalent certificates from agencies from other EC Member States must be recognised. The contracting authorities shall also recognise other equivalent proof of quality assurance measures.

(8) If the contracting authorities require as proof of technical capacity that the candidates or tenderers meet specific standards of environmental management the submission of certificates from independent agencies, these must refer to the Community System for Environmental Management and Industrial Inspection (EMAS) or standards of environmental management based on the relevant European or international standards and certified by the relevant agencies that comply with European Community law or European or international certification standards. Equivalent certificates from agencies from other EU Member States must be recognised. The contracting authorities shall also recognise other evidence of equivalent environmental management measures submitted by the candidates or tenderers.

(9) When verifying suitability, the contracting authorities shall also recognise as evidence certificates from the competent professional association.

Article 6

Description of Task

(1) The task must be described in clear and unequivocal terms, so that all candidates or tenderers can understand the description in the same way.

(2) The technical requirements must be defined in the task description:

1. either with reference to the technical specifications defined in the TS Annex in the order of importance:

a) national standards transposing European standards,

b) European technical approvals,

c) common technical specifications

d) international standards and other technical reference systems established by the European standardisation bodies or

e) where such standards and specifications are lacking, national standards, national technical approvals or national technical specifications for planning, calculating and executing works and the use of products.

each reference shall be accompanied by the words 'or equivalent';

2. or in terms of performance or functional requirements, which must be specified with adequate precision to convey a clear picture of the contract subject-matter and enable the contracting authorities to award the contract;
3. or as a combination of numbers 1 and 2, i.e.
 - a) in the form of performance requirements with reference to the specifications under number 1 as a means of presuming conformity with these performance or functional requirements;
 - b) or with reference to the specifications under number 1 with regard to certain features and with reference to the performance and functional requirements under number 2 with regard to other features.

(3) If the contracting authorities refer to the technical requirements cited in paragraph 2(1a), they may not reject a tender on the grounds that the services tendered for do not comply with the specifications to which they have referred, once the tenderer proves in his tender to the satisfaction of the contracting authority by whatever appropriate means that the solutions which he proposes satisfy in an equivalent manner the requirements defined by the technical specifications referred to. An appropriate means is a technical dossier from the manufacturer or a test report from a recognised body.

(4) If the contracting authorities set out technical requirements in the form of performance or functional requirements, they may not reject a tender which complies with a national standard transposing a European standard or a European technical approval, a common technical specification, an international standard or a technical reference system established by a European standardisation body, if these specifications address the performance or functional requirements made. In their tenders, the tenderers must prove by suitable means that the respective service complies with the performance or functional requirements of the contracting authorities. An appropriate means is a technical dossier from the manufacturer or a test report from a recognised body.

(5) Where contracting authorities lay down environmental features in terms of performance or functional requirements, they may use the specifications as defined by European or (multi)national eco-labels or by any other eco-label, provided that

- a) they are appropriate to define the features of the subject-matter of the contract,
- b) the requirements for the eco-label are drawn up on the basis of scientifically verified information,
- c) the eco-labels are adopted using a procedure in which all stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and
- d) they are accessible and available to all interested parties.

In the tender documents, the contracting authorities may indicate in the case of services bearing an eco-label that these presumably comply with the technical specifications described in the performance or functional requirements. The contracting authorities must accept any other suitable evidence, such as technical dossiers from the manufacturer or test reports from recognised bodies.

(6) Recognised bodies denote test and calibration laboratories as defined in the Verification Act and inspection and certification bodies that comply with applicable European standards. Contracting authorities shall accept certificates from recognised bodies established in other Member States.

(7) Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source or to a particular process, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain enterprises or certain products. Such references shall be permitted on an exceptional basis where a

sufficiently precise and intelligible description of the subject-matter of the contract is not possible; such references shall be accompanied by the words 'or equivalent'.

Article 7

Time Limits¹

(1) The contracting authorities must set a time limit for the request for participation of at least 37 days as of the date when the notice was sent. In the case of notices prepared and transmitted by electronic means, this time limit may be shortened by seven days.

(2) In cases of special urgency, the time limit for the request for participation must be at least 15 days or at least 10 days in the case of electronic transmission respectively as of the day the notice was sent (accelerated procedure).

(3) The contracting authorities must provide additional information requested on time about the tasks 6 days at the latest, in accelerated procedure, 4 days at the latest before expiry of the time limit for application.

(4) If requests for participation or tenders can only be prepared after an inspection on site or perusal of documents that have not been sent or the contracting authorities cannot provide the information on time, the time limits for submitting requests or tenders must be prolonged accordingly.

Article 8

Principles of Information Transfer

(1) The contracting authorities shall indicate in the notice or the tender documents whether information is to be conveyed by post, fax, directly, by electronic means or a combination of these means of communication.

(2) The network chosen for electronic transmission must be generally available and may not restrict access for the candidates or tenderers to the award procedures. The programmes to be used and their technical specifications must be

- generally accessible,
- compatible with information and communication technology products in general use and
- non-discriminatory.

(3) The contracting authorities must ensure that the requests for participation and tenders submitted are kept intact and confidential. Requests for participation and tenders for postal or direct delivery must be submitted in a sealed envelope, designated as such and kept under seal until expiry of the tender submission time limit. For requests for participation and tenders submitted by fax, this must be assured by appropriate organisational and technical means in keeping with the requirements of the contracting authority; this also applies for requests for participation and tenders transmitted by electronic means, whose confidentiality must be guaranteed through encryption. The encryption must remain in place until expiry of the submission time limit.

(4) Requests for participation made by phone must be confirmed in writing by the candidate before expiry of the time limit for the submission of requests.

(5) Tenders must be signed. Tenders transmitted by electronic means must be accompanied by an advanced electronic signature as per the Digital Signature Act and in keeping with the requirements of the contracting authorities or with a qualified electronic signature as per the Digital Signature Act. For tenders submitted by fax, the signature on the fax document is sufficient.

¹ The time limits shall be set in keeping with Council Regulation (EEC, Euratom) No. 1182/71 of 3 June 3 1971 determining the rules applicable to periods, dates and time limits (OJ EC No. L 124 of 8 June 1971 p. 1).

(6) The contracting authorities must ensure that the information on equipment specifications required for the electronic transmission of the requests for participation and tenders, including encryption, is available to the interested enterprises. In addition, they must ensure that the equipment can meet the requirements cited in Annex II.

Article 9

Notices

(1) Notice of an intended contract award shall be given using the formats contained in Annex II of Regulation (EC) No. 1564/2005.²

(2) Contracting authorities intending to conduct a design contest under Chapter 2 shall notify their intention using the formats contained in Annex XII of Regulation (EC) No. 1564/2005. The notice must be conveyed without delay to the Office for Official Publications of the European Communities.

(3) The notice must be conveyed by electronic³ or other means without delay to the Office for Official Publications of the European Communities. Where the notice is not transmitted by electronic means, the contents of the notice shall be limited to 650 words. In cases of special urgency, the notice must be transmitted by fax or by electronic means. The contracting authority must be able to provide proof of the day of despatch.

(4) Notices prepared and transmitted by electronic means must be published five days after their despatch to the Office for Official Publications of the European Communities at the latest. Notices not prepared and transmitted by electronic means shall be published no later than twelve days after despatch. The unabridged notices shall be published free of charge in the Supplement to the Official Journal of the European Communities in the respective original language and a summary of the most important parts in the other official languages of the Community. The notice may not be published in the official journals or press of the country of the contracting authority before the day of despatch to the Office for Official Publications of the European Communities; this date must be cited on publication. The publication may only contain the information published in the Official Journal of the European Communities or in a buyer profile under paragraph 5.

(5) The contracting authorities may publish a buyer profile on the Internet. It must contain information on planned and ongoing award procedures, awarded contracts as well as all other information relevant for contract award, such as the contact point, telephone and fax number, address and email address of the contracting authority.

Article 10

Selection of Candidates

(1) The contracting authorities shall select from among the candidates that have not been excluded those that meet the selection criteria (skills, reliability and efficiency) and invite these to negotiate.

(2) The criteria for selection and the requisite declarations and evidence must be specified by the contracting authorities in the notice.

(3) If several candidates meet the requirements in equal measure and the number of candidates is too high after an objective selection in keeping with the criteria, the selection can be made by lots among the remaining candidates.

(4) In the notice, the contracting authorities must specify the minimum number and if necessary the maximum number of candidates to be called to negotiate. In the case of an adequate number of suitable candidates, the minimum shall be three.

² OJ EC No. L 257 p. 1

³ The format and modalities for electronic transmission of notices are available at the website: <http://simap.europa.eu/>.

(5) The contracting authorities shall notify unsuccessful candidates after conclusion of the call for competition of the reasons for the rejection of their requests to participate in the negotiated procedure within 15 days. The contracting authorities may withhold information on the contract award in the first sentence, if its communication would obstruct law enforcement, would not otherwise lie in the public interest or prejudice the legitimate commercial interests of candidates or fair competition.

Article 11

Invitation to Negotiate and Tender, Contract Award

(1) The contracting authorities shall issue a written call to negotiate to the selected candidates at the same time. Negotiations may be conducted on both the subject-matter of the contract and on the tenders requested during negotiations.

(2) The call to negotiate must contain at least the following:

- the letter with the terms and conditions of procedure, information on time limits, a reference to the notice as well as the award criteria, if they are not yet listed in the notice,
- the task description and possibly a draft contract describing the specific performance and the contractual terms and conditions.

(3) Declarations and evidence still lacking can be subsequently requested by the contracting authorities within an extended time limit to be determined.

(4) In the task description, the contract notice or the invitation to tender, the contracting authorities must specify all award criteria to be applied. They must also indicate how the individual criteria are weighted. The weighting can be indicated by means of a range. Where the weighting is not possible for demonstrable reasons, the contracting authority shall indicate the criteria in descending order of importance.

(5) When deciding on contract award, the contracting authorities shall take into account various criteria of relevance to the subject-matter of a contract, for example quality, professional or technical merit, aesthetics, functional features, environmental features, customer service and technical assistance, performance date, completion period or time limit and price/fee. When specifying these award criteria, a clear and demonstrable distinction must be drawn from the criteria for the selection of the candidates. If the remuneration for the performance to be rendered is subject to regulations on fees and charges, the estimated price must be in keeping with the framework specified therein.

(6) The decision in favour of a tenderer may only be made on the basis of a tender eligible for an award.

The contracting authority shall conclude the contract with the tenderer who is expected to render the best possible performance based on the negotiated contractual contents and negotiated contractual terms and conditions in keeping with notified award criteria and their weighting.

(7) The procedure ends with the conclusion of the contract or with the decision not to award a contract.

Article 12

Documentation

(1) The award procedure must be continually documented from the outset to keep a record of the individual stages of the procedure, the individual measures and the grounds for the individual decisions.

(2) The documentation shall include the following at least:

- a) the name and the address of the contracting authority, the subject-matter and value of the contract,

- b) the names of the candidates or tenderers taken into account and the reasons for their selection,
- c) the names of the candidates or tenderers not taken into account and the reasons for their rejection,
- d) the reasons for the rejection of abnormally low tenders,
- e) the name of the successful tenderer and the reasons for the selection of his tender as well as - where known - the share of the contract the successful tenderer intends to subcontract to third parties,
- f) the reasons for a decision not to grant an award after notice have been given.

Article 13

Costs

- (1) Candidates and tenderers may not be charged a fee for the implementation of the procurement procedures. In design contests under Chapter 2, copying costs may be charged for postal or direct delivery.
- (2) No costs shall be reimbursed for drafting the request and tender documents.
- (3) If the contracting authority also demands that candidates prepare drafts, plans, drawings, calculations or other documents, uniform, adequate compensation shall be specified for all candidates. This shall be without prejudice to statutory regulations on fees or charges and copyright protection.

Article 14

Information on Contract Award, Decision against Contract Award

- (1) The contracting authorities shall provide information on each contract awarded in a notice. It must be prepared using the formats contained in Annex III of Regulation (EC) No. 1564/2005 and conveyed to the Office for Official Publications of the European Communities not later than 48 days after contract award.
- (2) Contracting authorities that have carried out a design contest shall give notice to the Office for Official Publications of the European Communities not later than 48 days after conducting the contest as in Annex XIII of Regulation (EC) No. 1564/2005 to the Office for Official Publications of the European Communities.
- (3) When giving notice of service contracts under Annex I Part B, the contracting authorities shall indicate in their notice whether they consent to publication.
- (4) For certain specific contracts, certain information on contract award need not be published, however, if its publication would obstruct law enforcement, otherwise be contrary to the public interest, be detrimental to the legitimate commercial interests of individual persons or impair fair competition.
- (5) Without delay and not later than 15 days after receipt of a relevant request, the contracting authorities shall notify the unsuccessful tenderers of the reasons for the rejection of their tender, the features and advantages of the successful tender and the name of the successful tenderer.
- (6) The contracting authorities shall inform the candidates without delay of the reasons for the decision to refrain from awarding a notified contract or recommence the procedure. They shall inform them about this in writing on request. The decision not to award a contract shall be conveyed by the contracting authorities to the Office for Official Publications of the European Communities.

Chapter 2

Design Contests

Article 15

Principles

(1) Contests are calling procedures for the purpose of providing the contracting authority with a plan or design to be selected by a jury based on comparative assessments with or without awarding prizes.

(2) Contests for the purpose of acquiring alternative proposals for plans especially in spatial planning, urban development and construction based on published uniform guidelines (design contests) can be announced any time prior to, during or without negotiated procedure.

The uniform guidelines also regulate the collaboration of chambers of architects and engineers in the preparation and execution of contests.

(3) The rules governing the conduct of design contests must be made available to those interested in taking part.

(4) Admission to participate in a design contest may not be restricted

- to the territory of a Member State or a part of it,
- to natural or legal persons.

(5) The awarding authority in a design contest must ensure that each candidate and participant is given the same opportunity.

The same terms and conditions and time limits shall apply for all participants. They shall each receive the same information at the same time.

(6) The design contest entries shall remain anonymous until the decision of the jury.

Article 16

Conduct of Design Contest

(1) When calling for competition, prizes and possible recognitions must be announced that are in keeping with the importance and difficulty of the building project and the scope of performance under the respective current regulations on fees or charges.

(2) Excluded from taking part in design contests are persons who could gain unfair advantage through their participation in the call for competition or the execution of the contest or exert influence on the decision of the jury. The same applies for persons who could gain such advantage or influence through relatives or persons with whom they maintain commercial ties.

(3) In design contests with a limited number of participants, the contracting authorities must set clear and non-discriminatory selection criteria. The number of participants must suffice to ensure genuine competition.

(4) The jury may only be composed of members who are independent of the participants in the contest. Where a particular professional qualification is required of these participants, the majority of the jury members shall have the same or equivalent qualification.

(5) The jury shall be independent in its decisions and opinions. These must be based on projects submitted anonymously and only to criteria cited in the notice under Article 9(2).

In its decisions, the jury shall abide by the specifications defined as binding by the awarding authority in the call to competition. Services that are inadmissible or exceed the requisite scope must be excluded from evaluation.

(6) The jury shall prepare a report to be signed by the members on the ranking of the projects it has selected and the individual contest entries. The awarding authority shall inform the participants without delay of the outcome by despatching minutes of the jury meeting. The awarding authority shall make public presentation of the entries submitted if possible not later than a month after the decision of the jury with the names of the authors and the minutes.

Where a prize-winner cannot be considered due to ineligibility or infringement of contest regulations, the other prize-winners and other participants shall move up in the ranking of the jury, provided the jury has not made other provisions explicitly cited in the minutes.

Article 17

Contract, Use

(1) As far and as soon as the contest task is to be performed, one or several of the prize-winners must be commissioned with the additional planning in keeping with the uniform guidelines cited in Article 15(2), provided that at least one of the prize-winners can guarantee the proper execution of the performances to be contracted and there are no other major reasons against awarding the contract.

(2) Partial solutions of contestants protected by copyright and competition law that have not been accounted for in the contract award may only be used against payment of adequate remuneration.

Chapter 3

Special Provisions on Contract Awards for Architectural and Engineering Services

Article 18

Scope of Application

(1) The provisions in this Chapter shall also apply to contract awards for services provided by architects and engineers.

(2) Services provided by architects and engineers are

- services included in the Fee Scales for Architects and Engineers (HOAI) and
- other services requiring the professional qualifications of an architect or engineer or required by the contracting authority.

Article 19

Qualification of Contractor

(1) If the requisite professional qualification is that of an architect or one of his specialties, all those must be admitted who are entitled under applicable national law to hold the title of architect or to exercise the profession of architect in the Federal Republic of Germany.

(2) If the professional qualification of a consulting engineer is required, all those must be admitted who are entitled under applicable national law to hold the title of consulting engineer or engineer or to exercise the profession of consulting engineer or engineer in the Federal Republic of Germany.

(3) Legal persons are admissible as contractors if they nominate a responsible member of the profession under paragraphs 1 and 2 to perform the task.

Article 20

Contract Award

(1) The purpose of the contractual negotiations with tenderers selected under Article 10(1) is to determine the tenderer most likely to be able to guarantee the proper and high-quality performance of the task at hand. To this end, the contracting authorities shall conduct contractual negotiations with the selected tenderers and decide on the contract award after completion of these negotiations.

(2) The candidate or tenderer may present reference projects as evidence of his capacity. The contracting authority may only demand the preparation of proposals for the design task in a procedure under paragraph 3 or a design contest under Chapter 2. The choice of a candidate or tenderer may not be influenced by unsolicited proposals.

(3) If contracting authorities outside of a design contest request proposals for the planning task, these proposals by the tenderers must be remunerated in keeping with the fee provisions in HOAI.

Annex I
Part A⁴

Category	Name	CPC Code ⁵	CPV Code
1	Maintenance and repair services	6112, 6122, 633, 886	From 50100000-6 to 50982000-5 (except 50310000-1 to 50324200-4 and 50116510-9, 50190000-3, 50229000-6, 50243000-0) and from 51000000-9 to 51900000-1
2	Land transport, ⁶ including armoured car services, courier services, except transport of mail	712 (except 71235) 7512, 87304	From 60100000-9 to 87304 60183000-4 (except 60121000 to 60160000-7, 60161000-4, 60220000-6), and from 64120000-3 to 64121200-2
3	Air transport services of passengers and freight, except transport of mail	73 (except 7321)	From 60410000-5 to 60424120-3 (except 60411000-2, 60421000-5) and 60500000-3, from 60440000-4 to 60445000-9
4	Transport of mail by land ⁷ and by air	71235, 7321	60160000-7, 60161000-4, 60411000-2, 60421000-5
5	Telecommunications services	752	From 64200000-8 to 64228200-2, 72318000-7, and from 72700000-7 to 72720000-3
6	Financial services: a) Insurance services b) Banking and investment services ⁸	ex 81, 812, 814	From 66100000-1 to 66720000-3
7	Computer and related services	84	From 50310000-1 to 50324200-4, from 72000000-5 to 72920000-5 (except 72318000-7 and from 72700000-7 to 72720000-3), 79342410-4
8	Research and development services ⁹	85	From 73000000-2 to 73436000-7 (except 73200000-4, 73210000-7, 73220000-0)
9	Accounting, auditing and book-keeping services	862	From 79210000-9 to 792230000-3
10	Market research and public opinion polling services	864	From 79300000-7 to 79330000-6, and 79342310-9 79342311-6

⁴ Where CPV is inconsistent with CPC, the CPC nomenclature shall apply.

⁵ CPC nomenclature (provisional version) used to specify the scope of application of Directive 92/50/EEC.

⁶ Except transport services by rail in Category 18

⁷ Except transport services by rail in Category 18

⁸ Except financial services for the issue, sale, purchase or transfer of securities or other financial instruments and central banking services.

Also excepting services - regardless of the financial arrangements - for the purchase or rent of land, existing buildings or other immovable property or related rights to this; financial services rendered under contract for purchase or rent concurrently, prior or subsequent to it, regardless of form, fall, however, under this.

⁹ Except contracts for other types of research and development services than those where the benefits accrue solely to the contracting authority for its use in the conduct of its own affairs, on condition that the service is wholly remunerated by the contracting authority.

11	Management consulting services ¹⁰ and related services	865, 866	From 73200000-4 to 73220000-0, from 79400000-8 to 794212000-3 and 793420000-3, 79342100-4, 79342300-6, 79342320-2, 79342321-9, 79910000-6, 79991000-7, 98362000-8
12	Architectural services, engineering services and integrated engineering services, urban planning and landscape architectural services, related scientific and technical consulting services, technical testing and analysis services	867	From 71000000-8 to 71900000-7 (except 71550000), and 79994000-8
13	Advertising services	871	From 79341000-6 to 793422200-5 (except 79342000-3 and 79342100-4)
14	Building-cleaning services and property management services	874, 82201 to 82206	From 70300000-4 to 70340000-6, and from 90900000-6 to 90924000-0
15	Publishing and printing services on a fee or contract basis	88442	From 79800000-2 to 79824000-6, from 79970000-6 to 79980000-7
16	Sewage and refuse disposal services, sanitation and similar services	94	From 90400000-1 to 90743200-9, (except 9071220-3), from 90910000-9 to 90920000-2 and 50190000-3, 50229000-6, 50243000-0

¹⁰ Except arbitration and conciliation services

Part B

Category	Name	CPC Code	CPV Code
17	Hotel and restaurant services	64	From 55100000-1 to 55524000-9, and from 98340000-8 to 98341100-6
18	Transport services by rail	711	60200000-0 to 60220000-6
19	Water transport services	72	From 60600000-4 to 60553000-0 and from 63727000-1 to 63727200-3
20	Supporting and auxiliary transport services	74	63000000-9, to 63734000-3 (except for 63711200-8, 63712700-0, 63712710-3 and from 63727000-1 to 63727200-3), and 98361000-1
21	Legal services	861	From 79100000-5 to 79140000-7
22	Personnel placement and supply services ¹¹	872	From 79600000-0 to 79635000-4 (except for 79611000-0, 79632000-3, 79633000-0), and from 98500000-8 to 98514000-9
23	Investigation and security services, except armoured car services	873 (except 87304)	From 79700000-1 to 797230000-8
24	Education and vocational education services	92	From 80100000-5 to 806600000-8 (except for 80533000-9, 80533100-0, 80533200-1)
25	Health, veterinary and social work services	93	From 79611000-0 and from 85000000-9 to 85323000-9 (except for 85321000-5 and 85322000-2)
26	Recreational, cultural and sporting services ¹²	96	From 79995000-5 to 79995200-7, and from 92000000-1 to 92700000-8 (except for 92230000-2, 922231000-9, 92232000-6)
27	Other services		

¹¹ Except contracts of employment

¹² Except contracts for the purchase, development, production or co-production of programmes by broadcasting companies and contracts on broadcasting time.

Annex II

Requirements relating to devices for the electronic receipt of requests to participate and tenders

The devices must at least guarantee that

- a) an electronic signature can be used for the tenders;
- b) the exact time and date of the receipt of requests to participate and tenders can be determined precisely,
- c) no-one can have access to the data before expiry of the time limit set for this,
- d) if that access prohibition is infringed, it may be ensured that the infringement is clearly detectable,
- e) only authorised persons may set or change the dates for opening data received,
- f) access to all data submitted must be possible only through simultaneous action by authorised persons and only after the prescribed date,
- g) data received must remain accessible only to persons authorised to acquaint themselves with it.

TS Annex

Technical Specifications

Definition of Terms

1. 'Technical specifications' mean the totality of the technical requirements contained in particular in the tender documents, defining the characteristics required of a material, product or supply, which permits a material, a product or a supply to be described in a manner such that it meets the purpose for which it is intended by the contracting authority. These technical requirements shall include levels of quality and environmental performance, design for all requirements, including accessibility for disabled persons, and conformity assessment, specifications on usability, use, safety and dimensions, including provisions on marketed product name, terminology, symbols, tests and testing methods, packaging, marking and labelling and production processes and methods as well as conformity assessment procedures. They shall also include rules relating to design and costing of construction works; the conditions for testing, inspection and acceptance of construction works, the construction methods or procedures and all other technical requirements which the contracting authorities are able to prescribe in relation to the finished works and to the materials or parts entailed by way of general or special provisions.
2. 'Standard' means a technical specification approved by a recognised standardisation body for repeated or continuous application, compliance with which is not compulsory.
3. 'International standard' is a standard adopted by an international standards organisation and made available to the general public.
4. 'European standard' is a standard adopted by a European standards organisation and made available to the general public.
5. 'National standard' is a standard adopted by a national standards organisation and made available to the general public.
6. 'European technical approval' means a favourable technical assessment of the fitness for use of a product to meet the essential requirements for building works; it is made based the specific features of the product and the prescribed conditions of application and use. European technical approvals are issued by an approved body designated for this purpose by the Member State.
7. 'Common technical specifications' mean technical specifications laid down in accordance with a procedure recognised by the Member States which has been published in the Official Journal of the European Communities.
8. 'Technical reference' means any frame of reference which is not an official standard that has been prepared by European standardisation bodies using procedures adapted to developments in market needs.

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