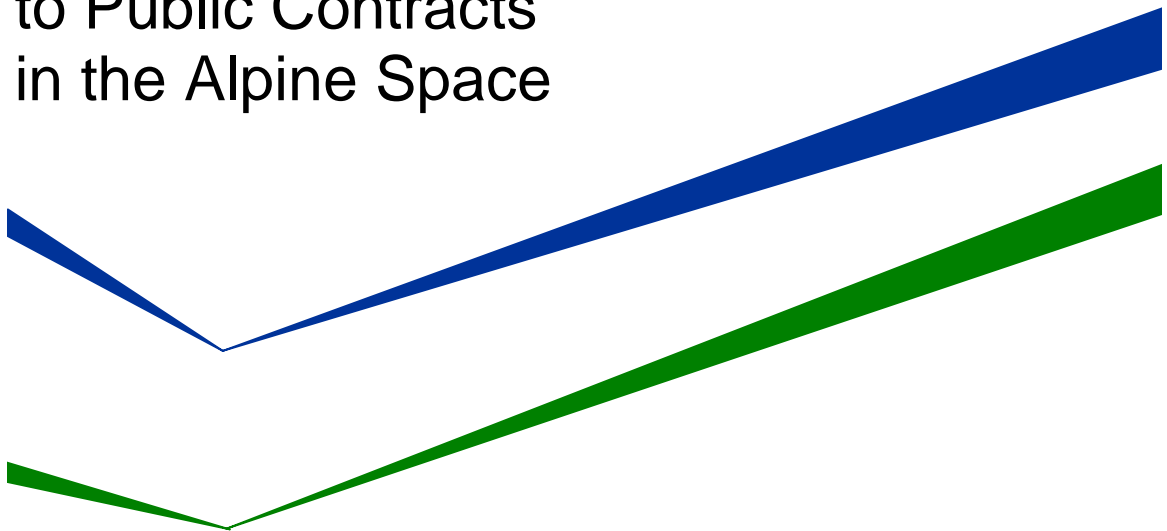


» **Your Key**  
to Public Contracts  
in the Alpine Space



» **A Practical Guide**  
on Public Procurement in the German,  
French, Italian, Austrian and Swiss  
Alpine Regions

Germany | France | Italy | Austria | Switzerland

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# » **Your Key** to Public Contracts in the Alpine Space

## » **A Practical Guide** on Public Procurement in the German, French, Italian, Austrian and Swiss Alpine Regions

The electronic guide „Your Key to Public Contracts in the Alpine Space” has been prepared by different Euro Info Centres and by various organizations promoting business in the Alpine region as part of the project “ALPPS - Alpine Public Procurement Services”. If you have further questions, please do not hesitate to contact any of the editors indicated above. You will find information on additional services offered within the ALPPS project on the website [www.alpps-online.com](http://www.alpps-online.com).

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## » Introduction

### » The significance of the public procurement market

Every year public authorities in the European Union (EU) spend more than 1.5 trillion Euro on the procurement of goods and services. This corresponds to about 15% of the gross domestic product in the EU and there are clear signs that these expenditures will increase in future.

Public authorities purchase a wide variety of goods and services, ranging from daily consumer goods and work for large infrastructure projects to highly specialized equipment and services. This means that almost every line of business has public purchasers as customers. There are even some economic branches that are specialized in the public market or offer their services exclusively to public bodies. Thus public authorities are very important customers for many enterprises.

### » Public procurement in the Alpine space

However, in contrast to the private economic sector, the purchasing activities of public institutions very often do not reach beyond national borders. According to studies performed by the European Commission, less than three percent of all public contracts are currently awarded to transnational bidders.

This reservation in regard to the transnational award of contracts presents a major problem for the Alpine Space. In this important economic area, where the EU countries Austria, France, Germany and Italy, the non-EU country Switzerland, and the new EU member state Slovenia meet, significant development opportunities for companies are inhibited by national borders. On the other hand, the lack of effective open competition means that public authorities in these countries miss out on chances to obtain better prices.

However, some success stories have shown us that bidders – even small and medium-sized enterprises – are definitely able to win public contracts in other Alpine countries. It is extremely important that other companies follow their example, especially in view of the fact that 18 percent of all public contracts in Europe are awarded in the Alpine Space and that public authorities spend more than 180 billion Euro in this area. Furthermore in the near future, important projects with great economic potential will be realized in the Alpine Space: for example, the construction of a high-speed train connection between Lyon and Turin, and the construction of the Brenner base tunnel.

### » Objective of this guide

This brochure has been prepared as a guide that can help increase your company's chances on the public markets in the German, French, Italian, Austrian and Swiss Alpine regions. Inadequate knowledge of the procurement legislation in other countries and

lack of information about current contract notices are often the reasons for missed opportunities on public markets in the neighbouring states. In this brochure you will find all the necessary basic information about the legal framework for public procurement and the data on the most important sources of information, presented in a clear question and answer structure. On the one hand, you will be informed about the European legislation; on the other hand, the different national regulations and practices in the Alpine countries will be described and explained. In addition, you will obtain many useful tips on public procurement procedures.

## » **Public Procurement in Europe**

In recent years public procurement has been harmonised and greatly simplified as part of the realisation of the single European market. Many principles of public procurement have therefore become the same in all EU member states and to some extent in the neighbouring countries. The regulations that apply on the EU level will be presented in the following.

### » **Which legal regulations apply in the European Union?**

The European Union (EU) has created a comprehensive package of regulations for public procurement in the form of directives. At the beginning of 2004, the EU has updated and simplified the directives on the procedures for public tenders. The following two directives are currently in force:

- The 'Classical Directive' 2004/18/EG for public works, supply and service contracts
- The 'Utilities Directive' 2004/17/EG for the areas of water, energy and transport supply as well as for the postal services.

The following two directives are relevant for judicial remedy:

- The Public Remedies Directive 89/665/EEC and
- The Remedies Utilities Directive 92/13/EEC

The Public Remedies Directives are revised likewise to time.

The directives include specifications on the contracting authorities, regulations on public procurement procedures, details on the media where contract notices are published and information on the principle of non-discrimination of EU bidders. The directives contain main principles of the Government Procurement Agreements (GPA), an agreement for the world-wide liberalisation of the public procurement system in the context of the World Trade Organization (WTO).

The European directives are transposed to national law by the individual EU member states. However, they apply only to large volume contracts that exceed specific tender thresholds. The member states have created their own national legislation for public contracts below the EU thresholds. Yet, prohibition of discrimination as the most important principle also applies to contracts below the tender thresholds. Thus bidders from EU member states may submit bids for all public contracts in other EU countries.

The EU has signed an agreement with Switzerland, which means that public procurement has also become more liberal in this country. Since Slovenia has joined the EU, the European directives have been implemented here as well.

» **Tip:**

You can obtain copies of the EU directives, the EU-Switzerland-Agreement and further information on current legislation from your local Euro Info Centre. You can also find the directives on the internet under: <http://simap.eu.int>

» **What are the tender thresholds for the application of the EU directives?**

The 'Classical Directive' applies for public works, supply and service contracts, if their estimated contract value excluding VAT achieves or even exceeds the following thresholds:

- 137.000 Euro for public supply and service contracts, which are assigned by central governments
- 211.000 Euro for public supply and service contracts, which are assigned by other contracting authorities, that are no central government authorities
- 5.278.000 Euro for public works contracts

The 'Utilities Directive' applies for contracts above:

- 422.000 Euro for public supply and service contracts and
- 5.278.000 Euro for public works contracts.

In some EU member states, these thresholds might be slightly lower. Higher thresholds are not allowed.

The Commission examines these thresholds in a two-year rhythm. The thresholds refer to an artificial currency, called the Special Drawing Rights (SDR), used in the context of the GPA of the WTO. The exchange rate Euro/SDR may fluctuate. The basic rule is that if the Euro is weak in the external relationship, the thresholds rise, if it is strong, they sink.

The European Commission publishes annually in the Official Journal the equivalent of the valid thresholds for member states which did not introduce the Euro, yet. This equivalent is examined since 1 January 2004 - in principle every two years.

» **Tip:**

Even smaller contracts may be covered by EU legislation, for example if they are part of a larger project. Thus the EU directives could apply to the laying of parquet flooring as part of the planned construction of a new hospital or to the graphic design of a brochure as part of a tourism campaign. Partial projects are usually awarded as lots or they are transferred to subcontractors by a general supplier who has won a whole public contract.

## » Who are the contracting authorities?

Traditional contracting authorities are the State, regional or local authorities, or bodies governed by public law, i.e. institutions that can be easily recognized as contracting authorities because of their public legal form of organisation. However, the EU directives also apply to private companies that assume tasks in the general interest and therefore have special and exclusive rights.

According to the EU directives for public procurement authorities must follow the public procurement directives if:

- they assume tasks of a non-commercial kind in the general interest and
- they are largely financed by the state, by regional administrative bodies or by other institutions governed by public law, or
- they are supervised by the latter, i.e. if the majority of members in the administrative, management or supervisory bodies is nominated by the state, by regional administrative bodies or by other institutions of the public right.

Thus ministries, regional governments, cities, communities, hospitals, universities, foundations, economic associations, institutions of the building industry and housing associations, etc. are contracting authorities.

### » Tip:

You will find a list of the most important public authorities in the Alpine regions in part 2 of this guide

## » Where are contract notices published?

All contract notices exceeding the EU tender thresholds must be published centrally in the Supplement to the Official Journal of the European Communities (OJS) and specially in the EU database TED (Tenders Electronic Daily). Supplement S and the database are updated daily with more than 600 contract notices and other information. The contract notices are published in the original language together with a brief translation in each official EU language. The latest contract notices can be obtained from the database TED under <http://ted.europa.eu>.

In addition to contract notices, the Supplement S and the database TED include numerous valuable information. For example, pre-information on planned public contracts and information on EU financed projects outside of the European Union are published as well as contract notices of non-EU members like Switzerland. Furthermore, Supplement S and TED include information on contract awards with the name of the successful bidder and – very often – the price. These documents provide useful information for market observation and competition analysis.

Above the thresholds, enterprises can thus receive relatively easily a complete overview of the current award activities in the European Union member states.

#### » Fast information using tender services

Tender services are a very efficient and reliable way to obtain the current contract notices. In the framework of tender services, specific search profiles are created for companies, which are an exact reflection of their products and services. On the basis of these search profiles, every day the tender service agency transmits only the contract notices that are tailored to the specific company. For the individual companies this means that they no longer have to perform a daily search for suitable contracts in an immense number of contract notices and thus save time and resources. These tender services are offered for example by the Auftragsberatungszentrum Bayern e.V. (Bavarian Public Procurement Centre) and the Euro Info Centres Grenoble, Lahr, Torino and Switzerland. You will find contact details on page 1 of this brochure.

A new platform for tenders aims at bringing together in one database public contracts from different European countries above and below the thresholds: the new database ETIS - European Tender Information System. The collection of public contracts from different European countries is until now unique in Europe. The Auftragsberatungszentrum Bayern and the Euro Info Centres Grenoble and Lahr are partners of the ETIS platform. Their ETIS portals are available on [www.abz-bayern.etisportal.com](http://www.abz-bayern.etisportal.com) and [www.etis.grex.fr](http://www.etis.grex.fr)

#### » Tip:

You should carefully consider whether you want to transfer the search for contract notices to a tender service or whether your company has the necessary capacities for the extensive search in various databases. You should also keep in mind that time-limits for the receipt of tenders are sometimes short and that it is therefore important to obtain the information early.

#### » Which procedures can be chosen for the award of contracts?

The European Directives specify four procedures for the award of public contracts above the thresholds: the open procedure, the restricted procedure, the negotiated procedure and the competitive dialogue.

Companies can participate in the open procedure immediately after publication of the contract notice by submitting a bid. All companies can request detailed tender documents.

Non-open tender procedures include two phases: in the first phase companies are requested to prove their economic and technical capacity by references and other

information. The contracting authorities examine if bidders are qualified to execute the contract. Only a certain number of companies specified in the tender documents will be selected and may submit a bid.

The negotiated procedure and the competition dialogue are - as well - normally a two-phase procedure. They include negotiations between contracting authorities and bidders and are similar to business in the private sector.

Contracting authorities can use the negotiated procedure and the competitive dialogue in exceptional cases only (except for the utilities sector). They have to give a reason on records for their decision. The open and the non-open procedure are in contrast equal in the EU-directives. Contracting authorities may choose between these procedures according to the directives

» **Tip:**

Before contract notices are published, documents called 'pre-information notices' must often be published in the Supplement to the Official Journal of the European Communities or in the TED data base. These advance notices about projects are particularly valuable because they give companies the opportunity to plan capacities, look for partners and use marketing instruments very early.

» **Which time-limits must be considered?**

The EU directives specify time-limits that a contracting authority must grant for the receipt of tenders or for the submission of requests to participate in a procedure. The time-limits specified by the European legislation are tight. With the new EU-directives the time-limits system became more complicated. Under certain circumstances time-limits may now be reduced. The following table gives an overview on the time-limits and possibilities to reduce them.

*The European minimum time-limits for the award of public contracts in days*

	Time-limit for requests to participate	Time-limit for the receipt of tenders	Possibility to reduce time-limit by ... days if pre-information has been published	Possibility to reduce time-limit by ... days if contract notice has been transmitted electronically	Possibility to reduce time-limit by ... days if tender documents are available electronically	The shortest possible time-limit
<b>Open procedure</b>	-	52	30	7	5	15
<b>Non-open procedure</b>	37	40	18	7 (expression of interest)	5 (receipt of bids)	10 / 10
<b>Accelerated non-open procedure</b>	15	10	-	5 (expression of interest)	-	10 / 10
<b>Negotiated procedure</b>	37	-	-	7 (expression of interest)	-	30 / X
<b>Accelerated negotiated procedure</b>	15	-	-	5 (expression of interest)	-	10 / X
<b>Competition dialogue</b>	37	-	-	7 (expression of interest)	-	30 / X

The time-limits specified by the European legislation are minimum time-limits. The contracting authorities have anytime the possibility to choose longer time-limits. Suppliers have to give attention to time-limits given from contracting authority. A delayed delivered receipt of tenders will bring to elimination.

**» Tip:**

The calculation of the time-limits for the submission of bids always starts at the point when the contract notice is dispatched to the publication medium. However, it may take up to 12 days before a contract notice is published so that the period for preparing a tender is shortened accordingly. For this reason you should start to prepare your tender as early as possible. If the published time-limit for the receipt of tenders is too short, you should contact your Euro Info Centre and request a review of the time-limits.

### » Which evidence can be requested in the course of an application?

Contracting authorities usually evaluate the economic, financial and technical capacity of suppliers. Thus various documents and certificates proving the reliability of the bidding company must be enclosed with the bid.

The documents that are requested often include extracts from the judicial records, certificates from courts, tax offices and administrative authorities, evidence of registration in professional or trade registers, statements from banks, balance sheets, declarations on the company's turnover or a list of the main services performed in the last three years. If certificates are not issued in the supplier's country of origin, a declaration on oath can usually be given instead. However, you should contact the contracting authority to find out if this is a viable alternative in a specific case.

#### » Tip:

It is a good idea to have a supply of the most frequently requested documents and certificates at hand even if you are currently not participating in an application procedure. You can find out from your local Euro Info Centre and from the Auftragsberatungszentrum Bayern e.V. which documents are usually requested in a specific country. Ask us for an overview for the Alpine countries.

### » Which legal remedies are available to suppliers?

The public procurement remedies directives include regulations on minimal remedies that the member states must grant bidders in public procurement procedures. Applicants for public contracts are granted actionable rights that they can enforce before a court of law. If a petition for review or a complaint is submitted during an application procedure, the procurement procedure can be stopped. In addition companies can usually assert claim for damages if there is subsequent evidence of errors in the procurement procedure.

#### » Tip:

Before taking any legal steps, you should contact the contracting authority directly. It may be possible to solve problems without taking legal action. The costs of such action should also be considered.

## » Public Procurement in the Alpine Space

While uniform regulations apply to public procurement above the European thresholds, public procurement procedures below these thresholds are characterized by national traditions. However, prohibition of discrimination as the most important principle also applies to contracts below the tender thresholds. Thus bidders from EU member states may submit bids for all public contracts in other EU countries. In addition in the past years many European Union states adapted the procedures for public procurement below the thresholds to the European Union contracting methods with the possibility of a more flexible application of the regulations. The following chapters will show you how EU law has been transposed in the European Alpine countries and which regulations apply below the EU thresholds.

## » Public Procurement in Germany: Baden-Württemberg and Bavaria

» What are the legal regulations for public procurement?

» Which regulations apply above the thresholds?

In Germany public procurement above the thresholds is regulated mainly by federal law. The federal “Länder” have introduced only a few additional directives and decrees that apply above the thresholds. In Germany public procurement above the thresholds is based on the following laws and regulations:

- Gesetz gegen Wettbewerbsbeschränkungen (GWB) § 97 ff. - Act Against Restraints of Competition
- Vergabeverordnung (VgV) - Regulation on Public Procurement, and
- Verdingungsordnung für Leistungen (VOL) - Regulations on Tender Procedures for Supplies and Services, Vergabe und Vertragsordnung für Bauleistungen (VOB) - Regulations on Tender Procedures for Public Works and Verdingungsordnung für freiberufliche Leistungen (VOF) – Regulations on Tender Procedures for Services by Free-lancers.

The VOL, VOB and VOF are particularly important for bidders as they provide detailed rules for tender Procedures.

» Which regulations apply below the thresholds?

Public procurement below the EU thresholds is determined by budgetary law. Usually budgetary law refers to the VOB and the VOL so that in the area of supplies, services and works there is uniform procurement legislation. The VOF is not relevant.

In addition there are areas in which no specific procurement legislation applies. For example, below the thresholds, the Bavarian communities are not affected by the VOL,

but the VOB applies. Furthermore many bodies under public law that are defined as 'contracting authorities' according to the EU directives on public procurement do not apply public procurement legislation to contracts below the EU thresholds. However, competition must be assured even in the areas in which no specific public procurement legislation applies and which are only subject to budgetary law. Usually prices from several suppliers must be ascertained; however, the suppliers can then be freely selected.

Below the thresholds a number of regional regulations supplement the budgetary law and the regulations on public procurement.

The following additional regulations and recommendations are in force in Bavaria:

- die Mittelstandsrichtlinie öffentliches Auftragswesen - Public Procurement Directive for Small and Medium-Sized Enterprises
- die Umweltrichtlinien Öffentliches Auftragswesen - Public Procurement Directives on the Environment
- die Bevorzugten-Richtlinie (Spätaussiedler, Werkstätten für Behinderte und Blindenwerkstätte, Verfolgte) - Preferential Treatment Directive (returnees, workshops for handicapped and blind persons, and persecuted persons)
- die Bekanntmachung der Staatsregierung zur Verhütung von Manipulationen im Verdingungswesen bei Bau-, Liefer- und Dienstleistungen - Announcement of the Bavarian Government on the Prevention of Manipulation in Public Procurement in the Area of Works, Supply and Service Contracts,
- die Bekanntmachung der Staatsregierung zur Scientology-Organisation - Verwendung von Schutzserklarungen bei der Vergabe offentlicher Auftrage - Announcement of the Bavarian Government on the Scientology Organisation – the use of protective statements in procurement procedures,
- die Bekanntmachung der Staatsregierung zur Bekampfung von Schwarzarbeit, illegaler Auslanderbeschaftigung, Vorenthaltung von Sozialabgaben und Steuerhinterziehung (Schwarzarbeit, illegale Auslanderbeschaftigung - SchwArbBekampf) - Announcement of the Bavarian Government on the Fight against Undeclared Employment, Illegal Employment of Foreign Workers, Withholding of Social Insurance Payments, and Tax Evasion,
- die Bekanntmachung der Staatskanzlei und der ubrigen Ressorts zum Ausschluss von offentlichen Auftragen nach § 5 des Gesetzes zur Bekampfung der Schwarzarbeit und § 6 Arbeitnehmer-
- Entsendegesetz (Eigenerklarung des Bewerbers/Bieters) - Announcement of the Bavarian Minister-President's Office and the Other Departments on the Exclusion of Public Contracts according to § 5 of the Law against Undeclared Employment and § 6 of the Law on the Posting of Employees (supplier's statement),
- die Bekanntmachung der Staatsregierung zur bevorzugten Berucksichtigung von Ausbildungsbetrieben - Announcement of the Bavarian Government on the Preferential Treatment of Companies Providing Apprenticeship,
- das Bayerische Bauauftrage-Vergabegesetz (BayBauVG) und die Bekanntmachung zur Bekampfung von Wettbewerbsverzerrungen durch vertragliche Verpflichtung und zur Einhaltung der in Bayern geltenden Lohntarife und zur restriktiven Weitervergabe an Nachunternehmer (Tariftreue- und Nachunternehmererklarung - WettbV) - Bavarian Law on the Awarding of Works Contracts and Announcement on the Fight against Distortions of Normal Trading Conditions by Contractual Agreement, the Adherence to the Fixed Rates For Wages and Salaries in Bavaria and on the Restrictive Transfer of Contracts to Subcontractors
- die Bekanntmachung des Bayerischen Staatsministeriums der Finanzen zur Anforderung von Bewerbererklarungen bei der Vergabe offentlicher Auftrage - Announcement of the Bavarian State Ministry of Finances on Requesting Applicants' Statements in Public Procurement Procedures

In Baden-Wurttemberg there are also regional provisions for public procurement, such as the 'Verwaltungsvorschrift zur Korruptionsverhutung und –bekampfung' (GABI. 1997, S. 487) - Administrative Provision on the Prevention of and Fight against Corruption and certain provisions in the 'Mittelstandsforderungsgesetz' (§ 22) - Law on the Promotion of Small and Medium-Sized Firms. For example a contracting authority in Baden-Wuerttemberg can decide on the period of exclusion and companies that use ecologically safe material during production or recycling products (LAbfG §5) are to be given preferential treatment. Furthermore there is a protective statement in regard to Scientology for consultation and training services. The administrative provision on the

award of contracts on the local level issued by the Ministry of the Interior (VergabeVwV) applies to all procurement procedures.

This provision refers to the respective laws that are to be observed:

- Das Bundesentschädigungsgesetz - The Federal Indemnification Law (§ 68)
- Das Schwerbehindertengesetz - The Disabled Persons Act
- Das Gesetz zur Bekämpfung der Schwarzarbeit - Law on the Fight against Undeclared Employment
- Das Arbeitnehmer-Entsendegesetz - Law on the Posting of Employees
- Die Bevorzugten-Richtlinie für öffentliche Aufträge (Spätaussiedler, Werkstätten für Behinderte und Blindenwerkstätte, Verfolgte) - Preferential Treatment Directive (returnees, workshops for handicapped and blind persons, and persecuted persons)

» **Tip:**

The procurement legislation for Germany, Bavaria, and Baden-Württemberg can be downloaded from the Internet under: [www.bund.de](http://www.bund.de) -> Ausschreibungen -> Gesetze und Verordnungen

» What are the national and regional media for the publication of contract notices?

» Above the thresholds:

Contract notices that are subject to EU regulations must be published in the Supplement to the Official Journal of the European Communities and in the TED database and can be obtained for example via tender services. Furthermore contract notices from Bavaria and Baden-Württemberg that exceed the thresholds are often published additionally in one or several national public procurement media (see links below). There might be exemptions in regard to small lots which are part of bigger projects. Small lots can be awarded without a formal European tender procedure. However, the total sum of these small lots must not exceed 20 percent of the total sum of the whole project and the single lot must remain below one million Euro.

» Below the thresholds

Contracting authorities in Baden-Württemberg and Bavaria are usually also obliged to publish those contract notices that are below the EU thresholds. However, the contracting authority has the right to choose the publication medium. Calls for competition that can be used as a first stage for restricted or negotiated procedures are also published to some extent. If the contracting authority has to or decides to publish a tender notice, the medium can be freely selected.

There is in Germany a multiplicity of publication media, in which contracts are regularly published, among them daily newspapers, trade journals, official journals, official gazettes and numerous internet portals. It is difficult to make definite statements on the

publication medium that a specific group of contracting authorities may choose. However, a certain tendency can be seen:

Public contracts of federal authorities must be published on the contract platform of the federal state under [www.bund.de](http://www.bund.de) -> Ausschreibungen. With approximately 50 new contracts every day “bund.de” is an important and productive source for contracts.

In addition, several Länder of the Federal Republic have created contract platforms for regional authorities and for municipalities, among others Hessen ([www.had.de](http://www.had.de)), Bavaria ([www.vergabe.bayern.de](http://www.vergabe.bayern.de)) and North Rhine-Westphalia. ([www.vergabe.nrw.de](http://www.vergabe.nrw.de))

Other sources for public contracts in Germany, Baden-Württemberg, and Bavaria, respectively, are the ‘Deutsches Ausschreibungsblatt’ – German Submission Journal, paper version or online service ([www.deutsches-ausschreibungsblatt.de](http://www.deutsches-ausschreibungsblatt.de)), the ‘Bayerischer Staatsanzeiger’ – Regional Submission Journal for Bavaria, paper version or online service ([www.bayerische-staatszeitung.de](http://www.bayerische-staatszeitung.de)) and the ‘Staatsanzeiger für Baden-Württemberg’ – Regional Submission Journal for Baden-Württemberg, paper version or online service ([www.staatsanzeiger-verlag.de](http://www.staatsanzeiger-verlag.de))

Communities often use local daily newspapers as their publication medium.

Different contract portals such as [www.abz-bayern.etisportal.com](http://www.abz-bayern.etisportal.com), [www.ausschreibungs-abc.de](http://www.ausschreibungs-abc.de) and [www.subreport.de](http://www.subreport.de) try to bundle contracts from different German sources.

» **Tip:**

If you are only interested in large contracts, it is sufficient to search the Supplement to the Official Journal of the European Communities or the equivalent TED database on a regular basis. However, if you would like to be informed of smaller projects in Baden-Württemberg and Bavaria, you should also search the national and regional media. You can obtain a list of regional daily newspapers, official journals and private agencies offering the search in tender databases from the Auftragsberatungszentrum Bayern and the Euro Info Centre Lahr.

» **Which procurement procedures are used?**

» Above the thresholds:

For contracts above the EU thresholds, the German regulations for public procurement specify the procurement types: ‘open procedure’, ‘non-open procedure’ and ‘negotiated procedure’. The competitive dialogue has also been implemented into German law during the latest update of the regulations. These procurement procedures have already been described (see part 1).

» Below the thresholds:

Public contracts below the thresholds can be likewise awarded in Germany in the open procedure, the non-open procedure and the negotiated procedure, designated as 'Öffentliche Ausschreibung' (public tender), 'Beschränkte Ausschreibung' (restricted tender) and 'Freihändige Vergabe' (free tender procedure). Limited tenders and free tender procedures may be executed without a previous call for competition. Contracting authorities must however guarantee that a sufficient number of bidders will participate to a tender procedure. In the area of supplies and services the German Auftragsberatungsstellen (Public Procurement Centres) of the 'Länder' may help to search for the right suppliers. They prepare short lists with potential bidders in the course of limited tenders and free tender procedures. Enterprises which would like to be short listed may register in the databases with bidders of the Public Procurement Centres. Contact: [www.abst.de](http://www.abst.de)

» **Tip:**

Although the open procedure or public tender offers the best opportunities for participation in a procurement procedure, you should also try to make your bid within restricted procedures. However, in the case of restricted and negotiated procedures you should increase your marketing and lobbying activities in order to be accepted in the group of suppliers who may submit a bid.

» Which time-limits must be considered?

» Which limits apply above the thresholds?

The time-limits that are to be observed for tenders above the thresholds are specified in the EU directives. (see part 1)

» Which limits apply below the thresholds?

No specific time-limits apply below the thresholds. The regulations on contract procedures mention only "appropriate time-limits". In practice the time-limits below the thresholds are usually shorter than those provided in the EU directives.

» **Tip:**

In addition to the above time-limits, contracting authorities in Germany may set a deadline for requesting the contract documents. Keep in mind that you can no longer participate in a procedure if you miss this deadline and have not requested the contract documents on time.

» Which evidence can be requested in the course of an application?

In Germany suppliers must submit the evidence specified in the EU public procurement directives both for tenders above and below the EU thresholds. The qualification criteria that are checked with the requested documents are listed in the VOL (§ 7 and 7a), the VOF (§ 7) and the VOB (§8 and 8a). In addition specific regional evidence may be requested.

In Bavaria a statement confirming adherence to the fixed rates for wages and salaries ('Tariftreueerklärung') is requested when works contracts are awarded. In this statement companies confirm that they observe the rates fixed in Bavaria when they execute the works contract. Foreign companies must also comply with these rates and pay their workers on German construction sites the respective wages. Subcontractors must observe this regulation as well. There are special forms for the statement confirming adherence to the fixed rates for wages and salaries and for the respective subcontractors' statement ('Nachunternehmererklärung'). These forms are enclosed with the contract documents or can be obtained from the Auftragsberatungszentrum Bayern. In Baden-Württemberg the statement confirming adherence to the fixed rates for wages and salaries does not exist.

Sometimes unusual declarations are requested in Bavaria, such as a 'Scientology Statement', in which suppliers must declare that they have no connection to Scientology. In Baden-Württemberg this Scientology Statement can be requested for certain services, such as consultation and training.

You should note that, according to German case law, bids which do not contain all the requested evidence must be excluded. This rule is usually not observed consistently. However, it is certainly better not to take any risks.

» **Tip:**

As a foreign company you should ask whether you need to submit all the requested evidence or not. If you have any doubts, you should enclose all documents in order to prevent an exclusion from the procedure. You can obtain an overview of the documents that are usually requested in Germany from the Auftragsberatungszentrum Bayern or from the Euro Info Centre Lahr.

» Who wins? Which award criteria apply?

» Which criteria apply above the thresholds?

In principle the contract is awarded to the most economically advantageous tender. The most economically advantageous tender does not necessarily correspond to the lowest price. It is usually determined on the basis of price, quality and various criteria

according to the contract in question. In Germany, the weighting of the criteria has to be published above the thresholds according to the new rules established by the EU directives.

In addition the supplier is to be selected according to expertise, financial capacity and reliability. According to the principle of open competition, as many applicants as possible should have the chance to make a bid. All bidders (which of course includes suppliers from other EU member states and from third countries) must be treated equally. The public procurement regulations explicitly forbid contracting authorities to negotiate with potential suppliers. However, talks with bidders with the purpose of dispelling any doubts on suppliers and their bids are permitted.

It is not allowed to consider criteria that are unrelated to public procurement when contracts are awarded. However, there are some specific provisions that may be taken into account when awarding contracts on a European or regional level. Thus it is permissible, for example, to consider small and medium-sized enterprises as well as members of the liberal professions to a reasonable extent when public contracts are awarded. Both the public procurement regulations in Baden-Württemberg and Bavaria contain positive statements on the award of contracts in lots. When public contracts that may have an effect on the environment are to be awarded, it will be determined whether and which environmentfriendly solutions suppliers offer.

» Which criteria apply below the thresholds?

For contracts below the thresholds, an additional regulation in Bavaria allows - in the case of equivalent tenders - a preferential treatment of companies which offer apprenticeships and vocational training or participate in the vocational training share system (under the collective agreement for wages and salaries). This regulation does not apply to foreign bidders. A similar regulation does not exist in Baden-Württemberg.

**» Tip:**

Above the thresholds, the contract documents include an overview of the weighting of the award criteria. Make sure that you study this information carefully. In the works area the tender with the lowest price is often chosen.

» [Where can I file a complaint?](#)

» For tenders above the thresholds:

In Germany legal protection is organised in two steps for tenders above the EU thresholds. First the “Vergabekammer” (authority of first instance) as administrative authority reviews the procurement procedure, as a second stage the “Beschwerdegericht” (court of appeal as the second instance) performs a judicial review.

Before a review procedure before the “Vergabekammer” is opened, companies must contact the contracting authority and make a complaint (“Rüge”). After the complaint has been made, the “Vergabekammer” takes action upon request and, after an oral hearing, makes its decision within a five-week period. In the case of a negative decision, it is possible to register a complaint with the court of appeal as second instance within two weeks. The court of appeal can reverse the decision of the “Vergabekammer”. Keep in mind that review procedures do involve expenses.

Competent „Vergabekammern“ in Bavaria:

**For the administrative divisions Oberpfalz, Oberfranken, Mittelfranken, Unterfranken:**

Vergabekammer Nordbayern  
Regierung von Mittelfranken  
Promenade 27  
D-91522 Ansbach  
Tel. ++49 / (0) 981 / 53-0  
Fax ++49 / (0) 981 / 53-837  
E-mail [vergabekammer.nord@t-online.de](mailto:vergabekammer.nord@t-online.de)

**For the administrative divisions Oberbayern, Niederbayern, Schwaben:**

Vergabekammer Südbayern  
Regierung von Oberbayern  
Maximilianstraße 39  
D-80538 München  
Tel. ++49 / (0) 89 / 2176-2411

Competent „Vergabekammern“ in Baden-Württemberg:

Landesgewerbeamt Baden-Württemberg  
Vergabekammer des Landes Baden-Württemberg  
Willi-Bleicher-Straße 19  
70174 Stuttgart  
Tel. ++49 / (0) 711 / 123-2738

Competent “Vergabekammer” regarding contracts awarded by federal institutions:

Bundeskartellamt  
Kaiser-Friedrich-Strasse 16  
D-53113 Bonn  
Tel. ++ 49 / (0) 228 / 9499-0  
Fax ++ 49 / (0) 228 / 9499-400  
E-mail [info@bundeskartellamt.bund.de](mailto:info@bundeskartellamt.bund.de)

The responsible “Vergabekammer” is named in the tender notice.

» For tenders below the thresholds:

In the case of public procurement procedures below the EU thresholds, you can only complain to the supervising authority. However, this complaint usually has no legal consequences for the contracting authority; it must be considered to be merely an administrative action. In addition, a claim for damages can be asserted.

» **Tip:**

Remember that your legal protection regarding contracts below the EU thresholds is not the same as above the thresholds.

» **The most important contracting authorities**

» **In Bavaria**

- Europäische Patentorganisation (EPO)/Europäisches Patentamt, München  
**[www.european-patent-office.org](http://www.european-patent-office.org)**
- Bundesagentur für Arbeit, Nürnberg, **[www.arbeitsagentur.de](http://www.arbeitsagentur.de)**

Bayerische Ministerien und nachgeordnete Dienststellen  
(Bavarian Ministries and subordinate authorities)

- Bayerisches Staatsministerium der Finanzen, München, **[www.stmf.bayern.de](http://www.stmf.bayern.de)**
- Bayerisches Staatsministerium des Innern, München, **[www.stmi.bayern.de](http://www.stmi.bayern.de)**
- Bayerisches Staatsministerium für Unterricht und Kultus, München, **[www.km.bayern.de](http://www.km.bayern.de)**
- Bayerisches Landesamt für Versorgung und Familienförderung, Bayreuth, **[www.lvf.bayern.de](http://www.lvf.bayern.de)**
- Staatliche Lotterieverwaltung/Bayerische Spielbanken, München, **[www.lotto-bayern.de](http://www.lotto-bayern.de)**
- Wasser- und Schifffahrtsamt Nürnberg, Nürnberg, **[www.wsv.de/wsa-n](http://www.wsv.de/wsa-n)**
- Wasser- und Schifffahrtsamt Regensburg, Regensburg, **[www.schifffahrtsamt.de](http://www.schifffahrtsamt.de)**
- Wasser- und Schifffahrtsamt Aschaffenburg, Aschaffenburg, E-Mail: **[info@wna-ab.wsv.de](mailto:info@wna-ab.wsv.de)**
- Staatliches Hochbauamt München I, München, **[www.baynet.de](http://www.baynet.de)**
- Staatliches Hochbauamt München II, München, **[www.baynet.de](http://www.baynet.de)**
- Universitätsbauamt, München, **[www.baynet.de](http://www.baynet.de)**
- Bauamt Technische Universität München, München, **[www.batum.bayern.de](http://www.batum.bayern.de)**
- Staatliches Hochbauamt Augsburg, Augsburg, **[www.baynet.de](http://www.baynet.de)**
- Straßenbauamt München, München, **[www.sbam.bayern.de](http://www.sbam.bayern.de)**
- Straßenbauamt Nürnberg, Nürnberg, **[www.sban.bayern.de](http://www.sban.bayern.de)**
- Autobahn Direktion Nordbayern, Bayreuth, **[www.abdnb.bayern.de](http://www.abdnb.bayern.de)**
- Oberfinanzdirektion München, München, **[www.obf.bayern.de](http://www.obf.bayern.de)**
- Oberfinanzdirektion Nürnberg, Nürnberg, **[www.ofd.bayern.de](http://www.ofd.bayern.de)**
- Bezirk Unterfranken Zentraleinkauf, Silcherstr. 5, D-97074 Würzburg
- Ludwig-Maximilians-Universität München, München, **[www.uni-muenchen.de](http://www.uni-muenchen.de)**
- Georg-Simon-Ohm-Fachhochschule, Nürnberg, **[www.fh-nuernberg.de](http://www.fh-nuernberg.de)**
- Fachhochschule Würzburg-Schweinfurt, Schweinfurt, **[www.fh-wuerzburg.de](http://www.fh-wuerzburg.de)**

Beschaffungsstellen der Polizei (purchasing offices of the police)

- Bayerisches Polizeiverwaltungsamt, München, **[www.polizei.bayern.de](http://www.polizei.bayern.de)**
- Polizeipräsidium München, Abteilung Versorgung, **[www.baynet.de](http://www.baynet.de)**
- Polizeipräsidium Oberbayern, München, **[www.polizei.bayern.de](http://www.polizei.bayern.de)**
- Polizeipräsidium Niederbayern/Oberpfalz, Regensburg, **[www.baynet.de](http://www.baynet.de)**
- Polizeipräsidium Schwaben, V2 – Zentraleinkauf Augsburg, **[www.polizei.bayern.de](http://www.polizei.bayern.de)**
- Präsidium der Bayerischen Bereitschaftspolizei, Bamberg, **[www.baynet.de](http://www.baynet.de)**
- Bayerisches Landeskriminalamt, München, **[www.polizei.bayern.de/blka](http://www.polizei.bayern.de/blka)**

Local contracting authorities

- Landeshauptstadt München, Vergabestelle 1, **[www.muenchen.de/Rathaus](http://www.muenchen.de/Rathaus)**
- Landeshauptstadt München, Abfallwirtschaftsbetrieb, **[www.muenchen.de/Rathaus](http://www.muenchen.de/Rathaus)**
- Landeshauptstadt München, Kommunalreferat Abt.1, **[www.muenchen.de/Rathaus](http://www.muenchen.de/Rathaus)**
- Landeshauptstadt München Direktorium, Amt für Informations- und Datenverarbeitung, **[www.muenchen.de/Rathaus](http://www.muenchen.de/Rathaus)**

- Münchner Verkehrs- und Tarifverbund, München, [www.mvv-muenchen.de](http://www.mvv-muenchen.de)
- Städtisches Krankenhaus München-Schwabing, München, [www.kms.mhn.de](http://www.kms.mhn.de)
- Landeshauptstadt München, Baureferat, Vergabebüro, E-Mail: [baureferat@muenchen.de](mailto:baureferat@muenchen.de)
- Stadt Fürth Baureferat, Fürth, [www.fuerth.de](http://www.fuerth.de)
- Stadt Augsburg Baureferat-Vergabestelle, Augsburg, [www.augsburg.de](http://www.augsburg.de)
- Stadt Nürnberg, Zentrale Dienste, [www.nuernberg.de/schluesssel/aemter-info](http://www.nuernberg.de/schluesssel/aemter-info)

You can find a directory of Bavarian authorities (Behördenwegweiser) on the Internet under <http://www.baynet.de/behordenwegweiser>. Here you will also find links to other public institutions in Bavaria.

## » In Baden-Württemberg

- Haus des Landtags, Stuttgart, [www.landtag-bw.de](http://www.landtag-bw.de)

Building administration for universities in Baden-Wuerttemberg

- Universitätsbauamt Stuttgart und Hohenheim, Stuttgart (Vaihingen), [www.uba-stuttgart-hohenheim.de](http://www.uba-stuttgart-hohenheim.de)
- Universitätsbauamt Heidelberg, Heidelberg, [www.uba-heidelberg.de](http://www.uba-heidelberg.de)
- Universitätsbauamt Freiburg, Freiburg, [www.uba-freiburg.de](http://www.uba-freiburg.de)

Staatsbauverwaltung Baden-Württemberg - Road Construction Baden-Wuerttemberg – road construction authorities

- Straßenbauamt Freiburg, Freiburg, E-Mail [posteingang@sbafr.sbv.bwl.de](mailto:posteingang@sbafr.sbv.bwl.de)
- Straßenbauamt Heidelberg, Heidelberg, E-Mail [posteingang@sbahd.sbv.bwl.de](mailto:posteingang@sbahd.sbv.bwl.de)
- Straßenbauamt Karlsruhe, Karlsruhe, E-Mail [posteingang@sbaka.sbv.bwl.de](mailto:posteingang@sbaka.sbv.bwl.de)

Staatsbauverwaltung Baden-Württemberg – Public building construction authorities

- Staatliches Hochbauamt Baden-Baden, Baden-Baden, E-Mail [Poststelle@babad.fv.bwl.de](mailto:Poststelle@babad.fv.bwl.de)
- Staatliches Hochbauamt Freiburg, Freiburg, E-Mail [Poststelle@bafr.fv.bwl.de](mailto:Poststelle@bafr.fv.bwl.de)
- Staatliches Hochbauamt Heidelberg, Heidelberg, E-Mail [Poststelle@bahd.fv.bwl.de](mailto:Poststelle@bahd.fv.bwl.de)
- Staatliches Hochbauamt Reutlingen, Reutlingen, E-Mail [Poststelle@bart.fv.bwl.de](mailto:Poststelle@bart.fv.bwl.de)
- Staatliches Hochbauamt Schwäbisch Hall, Schwäbisch Hall, E-Mail: [Poststelle@basha.fv.bwl.de](mailto:Poststelle@basha.fv.bwl.de)
- Staatliches Hochbauamt Ulm, Ulm, E-Mail [Poststelle@baul.fv.bwl.de](mailto:Poststelle@baul.fv.bwl.de)

You can find a directory of authorities in Baden-Württemberg (Behördenwegweiser) on the Internet under <http://www.service-bw.de>. Here you will also find links to public institutions in Bavaria..

### » Tip:

A personal contact to the most important contracting authorities in order to be informed of their procurement activities is highly recommended. This allows you to be informed of a planned project before publication of the contract notice.

» Where can I obtain information?

Here are the most important addresses to contact if you have any questions concerning public procurement procedures:

» Questions regarding supply, service and works contracts:

Auftragsberatungszentrum Bayern e.V.  
Orleansstraße 10 – 12  
D-81669 München  
Tel. ++49 / (0) 89 / 5116-172  
Fax ++49 / (0) 89 / 5116-663  
E-Mail [info@abz-bayern.de](mailto:info@abz-bayern.de)  
Internet [www.abz-bayern.de](http://www.abz-bayern.de)

IHK-Auftragsberatungsstelle Stuttgart  
Jägerstr. 30  
D-70174 Stuttgart  
Tel. ++49 / (0) 711 / 2005-542  
Fax ++49 / (0) 711 / 2005-528  
E-Mail [auftragsberatung@stuttgart.ihk.de](mailto:auftragsberatung@stuttgart.ihk.de)  
Internet [www.stuttgart.ihk.de/produktmarken/starthilfe/auftrag/auftrag.jsp](http://www.stuttgart.ihk.de/produktmarken/starthilfe/auftrag/auftrag.jsp)

» Questions regarding European regulations:

Euro Info Centre München  
Industrie- und Handelskammer für München und Oberbayern  
Max-Joseph-Straße 2  
D-80333 München  
Tel. ++49 / (0) 89 / 5116-475  
Fax ++49 / (0) 89 / 5116-615  
E-mail [info@eic-muenchen.de](mailto:info@eic-muenchen.de)  
Internet [www.eic-muenchen.de](http://www.eic-muenchen.de)

Euro Info Centre Lahr  
IHK Südlicher Oberrhein  
Lotzbeckstr. 31  
D-77933 Lahr  
Tel. ++ 49 / (0) 7821 / 2703-690  
Fax ++ 49 / (0) 7821 / 2703-777  
E-Mail [petra.steck@freiburg.ihk.de](mailto:petra.steck@freiburg.ihk.de)  
Internet [www.suedlicher-oberrhein.ihk.de](http://www.suedlicher-oberrhein.ihk.de)

## » Public Procurement in France: Rhône-Alpes and Alsace

» What are the legal regulations for public procurement?

» Which regulations apply above the thresholds?

Public procurement EU directives Nr 2004/17/CE and 2004/18/CE have been implemented in France through the following texts :

a) French Public Procurement Code (CMP or **Code des Marchés Publics**) – decree Nr 2006-975 of August 1<sup>st</sup>, 2006. It applies to public contracts awarded by the central government, by its public bodies other than those with an industrial or commercial character, by territorial authorities and their public institutions. It also applies to contracts awarded in the form of mandates given by one of these public authorities and to purchasing centres. It covers also contracts launched by the above entities in the utilities sectors.

It must be noticed that framework agreements (“accords cadres”) are now covered by the CMP.

b) **ordinance Nr 2005-649 dated 06/06/2005**. It applies to some other entities, that do not enter under the scope to the French public procurement code, but that must nevertheless observe publication and competition requirements settled by EU directives. It concerns for instance :

- certain industrial and commercial public bodies – mostly utilities entities (e.g.: Electricité de France, SNCF...) and public interest groups ;
- certain associations;
- Banque de France...

» Which regulations apply below the thresholds?

The above texts apply here as well.

### » Tip :

All ordinances, orders of French Ministries linked to the above mentioned texts can be consulted on the following website

[http://www.minefi.gouv.fr/themes/marches\\_publics/index.htm](http://www.minefi.gouv.fr/themes/marches_publics/index.htm)

» What are the national and regional media for the publication of contract notices?

The following table gives an overview on the requirements as regards the publication of tender notices:

» Entities covered by the French Public procurement code (CMP) except those operating in the utilities<sup>1</sup> sectors

Type of contract/amount (All amounts are without VAT)	Calls for competition
All contracts below 4 000 € as well as contracts referred to in article 35 II (cases of urgency)	Not required.
<ul style="list-style-type: none"> <li>• All contracts – from 4 000 to 90 000 €</li> <li>• All contracts above 4 000 €, for services contracts referred to in article 30.</li> </ul>	Publication modalities according to the value and object of the contract. Publicity media chosen by the contracting authority.
<p><b>Supplies and services</b> (except services referred to in article 30) :</p> <ul style="list-style-type: none"> <li>• from 90 000 € to 135 000 € for the State</li> <li>• from 90 000 € to 210 000 € for territorial entities</li> </ul> <p><b>Works</b> : from 90 000 € to 5 270 000 €</p>	<p><b>Compulsory publication in the:</b> Official Bulletin for Contract Notices (“Bulletin officiel d’annonces des marches publics, BOAMP) <b>or</b> in a journal for legal notices” <b>and</b>, in certain cases, in the specialized press</p>
<p><b>Supplies and services</b> (except services according to article 30) :</p> <ul style="list-style-type: none"> <li>• above 135 000 € for the State</li> <li>• above 210 000 € for territorial entities</li> </ul> <p><b>Works</b> : above 5 270 000 €</p>	<p><b>Obligatory publication in the:</b> Official Journal of the European Union (OJ EU) / TED database <b>and</b> in the BOAMP</p>

**Prior information notices** are required for : works contracts above 5 270 000 € and supplies and services contracts above 750 000 €.

**Contract awards** are required for contracts launched under a codified procedure (see chapter dedicated to procedures) and for contracts covering services listed in article 30, above 210 000 €. The contract award must be published on the media used for the publication of the tender notice.

<sup>1</sup> Utilities sectors : water, energy, transport and postal services

» Entities covered by the French CMP but operating in the utilities sectors

Type of contract/amount (All sums are indicated without VAT)	Publicity media
All contracts below 4 000 €	Not required.
<ul style="list-style-type: none"> <li>All contracts from 4 000 to 90 000 €</li> <li>All contracts above 4 000 €, for services referred to in article 148</li> </ul>	Publication modalities according to the value and object of the contract. Publicity media chosen by the contracting authority.
<ul style="list-style-type: none"> <li><b>Supplies &amp; services</b> (except for services according to article 148): above 90 000 € and below 420 000 €</li> <li><b>Works</b> : from 90 000 to 5 270 000 €</li> </ul>	<b>Compulsory publication in the:</b> Official Bulletin for Contract Notices (BOAMP) <b>or in a</b> journal for legal notices <b>and</b> , in certain cases, in the specialized press
<ul style="list-style-type: none"> <li><b>Supplies &amp; services</b> : above 420 000 €</li> <li><b>Works</b> : above 5 270 000 €</li> </ul>	<b>Obligatory publication in the:</b> OJ EU / TED database <b>and</b> in the BOAMP

**Prior information notices** are required for :

- supplies and services contracts above 750 000 €
- works contracts above 5 270 000 €

**Contract awards** are required for :

- supplies and services contracts above 420 000 € ( OJ EU and BOAMP)
- for works contracts above 420 000 € (publication on OJ EU only for contracts awarded above 5 270 000 €).

» Entities covered by the French ordinance dated June 6<sup>th</sup>, 2005 (not covered by CMP)

Type of contract/amount (All sums are indicated without VAT)	Calls for competition
<b>Excepted entities operating in the utilities sectors</b> (decree 2005-1742 dated Dec. 30 <sup>th</sup> , 2005) <ul style="list-style-type: none"> <li><b>Supplies &amp; services</b> : above 210 000 €</li> <li><b>Works</b> : above 5 270 000 €</li> </ul>	OJ EU / Ted database
<b>Entities operating in the utilities sectors</b> (decree 2005-1308 dated Oct. 20 <sup>th</sup> , 2005) <ul style="list-style-type: none"> <li><b>Supplies &amp; services</b> : above 420 000 €</li> <li><b>Works</b> : above 5 270 000 €</li> </ul>	OJ EU / Ted database

» **Tip:**

These are the main journals for legal notices in the Rhône-Alpes region:

- Le Dauphiné Libéré
- Les affiches de Grenoble
- Tribune Espoir Progrès
- Le Progrès de Lyon
- L'essor savoyard Petites affiches
- Le Moniteur

And in Alsace:

- Dernières nouvelles d'Alsace
- Le Moniteur

» Which procurement procedures are used?

We must distinguish the codified procedures (“procedures formalisées”) from the adapted procedure.

» Codified procedures

### **Calls for tenders**

A call for tender is the procedure with which the public authority selects the economically most advantageous offer without negotiations on the basis of objective criteria previously made known to the applicants. This is the most common legal procedure; the other procedures apply only in specific cases.

A call for tender can be open or restricted, as chosen by the authority responsible for the contract; in the case of restricted calls for tender only approved applicants can submit their bid after their application has been selected.

### **Negotiated procedure**

A negotiated procedure is a procedure in which the public authority chooses a bidder after consultation with the applicants and the negotiation of the contract conditions with one or several of them. It can be awarded with or without prior publication and, if there is no publication, with or without call for competition. Negotiated procedures can only be awarded in the cases specified in article 35 of the “Code des Marchés Publics”.

## **Competition dialogue**

The competition dialogue can be used if the contracting authority cannot define with sufficient precision the technical means that are necessary for its needs or if it is not able to handle the legal and financial implementation of a project.

## **Calls for competition**

A call for competition is the procedure with which the public authority, after call for competition and the assessment of a commission, chooses a plan or project before awarding it to one of the winners of the competition. It is particularly used in the areas of national and regional development, urban development, architecture, engineering and data processing.

## **Dynamic purchasing system**

The dynamic purchasing system is a totally electronic procedure, to be used only for usual supplies. The public body awards a contract, after a call for competition, to the candidate that has previously been selected on the basis of an indicative offer. A dynamic purchasing system should not exceed 4 years.

The different steps of a dynamic purchasing system are quite similar to the one of an open call for tender:

- The call for competition must mention that the procedure consists in a dynamic purchasing system;
- during the procedure, companies must get a free and continuous access, by electronic means, to the documents concerning the tender ;
- the candidates send an indicative offer together with their candidature ;
- those selected, are invited to send their final proposal/offer.

A simplified tender notice is published prior to every call to competition in order to enable candidates that have not been selected yet to get an opportunity to be selected .

### » Adapted procedure

In an adapted procedure, the contracting authority chooses the publicity modalities according to the amount and object of the contract. It defines the means to be used in order to select candidates (in terms of delay for submitting the offers, internal procedure, ...).

The adapted procedure can never be used for contracts over :  
135 000 € for supplies and services for the State  
210 000 € for supplies and services for the territorial authorities  
210 000 € for works

420 000 € for utilities sectors  
(except in the case of services contracts listed in article 30 or 148 of CMP)

**The following tables provide an overview on the application of the different procurement procedures.**

» For supplies and services (except services according article 30)

Thresholds (VAT excluded)	Procedures
For the government: below 135 000 € For territorial authorities: below 210 000 €	Adapted procedure
For the government : above or equal to 135 000 € For the territorial authorities above or equal to 210000 €	Call for tender (open or restricted) or, under certain conditions: - competition dialogue - negotiated contract - other codified procedures (such as calls for competition)

» For services according to article 30 of CMP : Adapted procedure whatever the value of the contract.

» For works

Thresholds (VAT excluded)	Procedures
Below 210 000 EUR	Adapted procedure
Above or equal to 210 000 € and below 5 270 000 €	The person responsible for the contract chooses between: - call for tender (open or restricted) - negotiated procedure - call for competition - competition dialogue - dynamic purchasing system
Above or equal to 5 270 000 €	Calls for tender (open or restricted) or, under certain conditions: - negotiated procedure (in very rare cases) - competition dialogue - planning – realization - call for competition

» For supplies, services and works of entities covered by the CMP and working in the utilities sectors

Thresholds (VAT excluded)	Procedures
Below 420 000 €	Adapted procedure
Above 420 000 €	Any codified procedure is acceptable i.e. : - open or restricted procedure - negotiated procedure - dynamic acquisition system - call for competition

» Which time-limits must be considered (CMP)?

The time-limits mentioned here below concern public authorities covered by the CMP, except those operating in the utilities sectors. For these utilities sectors, the time-limits may even be shorter.

Procedures	Time-limits
Open call for tender	<p>1. Not less than 52 days            2. 22 days if a prior information notice was published            3. 22 days for works contracts under 5 270 000 € (15 days in the case of urgency not resulting from the actions of the public authority)</p> <p>The above time-limits can be shortened (<b>less 7 days</b>) if the tender notice was sent to publication by electronic means. Time-limits 1 and 3 can even be shortened (<b>less 5 days</b>) if the public authority gives a free and direct access through internet to all useful tender information.</p> <p><b>These 7 and 5 days reductions can be cumulative</b> (except in case 2)</p>
Restricted call for tender	<p>a) <u>receipt of requests to participate</u>            1. Not less than 37 days (30 days if the tender was sent to publication by electronic means).            2. 22 days for works contracts under 5 270 000 €</p> <p>These 2 time-limits can be reduced to 15 days in the case of urgency not resulting from the actions of the public authority (10 days if the tender notice was sent to publication by electronic means).</p> <p>b) <u>receipt of bids</u>            1. Not less than 40 days            2. 22 days if a prior information notice was sent to publication            3. 22 days for works contracts under 5 270 000 €</p> <p>These time limits can be shortened (<b>less 5 days</b>) if the public authority gives a free and direct access through internet to all useful tender information.</p> <p>These time-limits can be reduced to 10 days in case of urgency not resulting from the actions of the public authority.</p>
Negotiated procedure (if a call for competition was published)	<p>a) <u>receipt of requests to participate</u>            Not less than 37 days (30 days if the tender notice was sent to publication by electronic means), or 22 days for works contracts under 5 270 000 € (15 days if the tender notice was sent by electronic means). In case of urgency not resulting for the actions of the public body, these time-limits can be reduced to 15 days (or 10 days if the tender notice was sent by electronic means).</p> <p>b) <u>receipt of bids</u>            Freely fixed by the public body.</p>
Competition dialogue	<p>Not less than 37 days for the receipt of applications (30 days if the tender notice was sent by electronic means). Once the schedule of conditions has been established, not less than 15 days for the receipt of bids.</p>
Calls for competition	<p>For the open competition the same time-limits as for the open call for tenders            For the restricted competition the same time-limits as for the restricted call for tenders.</p>
Adapted procedure	<p>The time-limits for the receipt are fixed by the contracting authority ; the period must, however, be long enough to guarantee free access to the public contract.</p>

» Which evidence can be requested in the course of an application?

The provisions of French law mentioned in the following chapter apply to all procedures, except for the adapted procedures in which the contracting authority decides which evidence is necessary. However, since this free choice is to allow a simplification of formalities, the responsible public body should not require more pieces of evidence than required in the codified procedures.

» Documents required for the application

Articles 44 and 45 of the CMP specify the list of documents that can be requested to the applicant. This includes in particular:

1. If composition proceedings have commenced (recovery plan settled for the company), a copy of the respective judgments ;
2. A declaration in lieu of an oath to prove:
  - that the applicant has not been banned from participating in a competition;
  - that he is not engaged in a liquidation procedure
  - that he has not been convicted of certain infractions of the labour code, including illicit work and employment of foreign workers in an irregular situation, during the past five years;
  - that he has met his fiscal and social obligations;
3. Information that allows the evaluation of the applicant's professional, technical and financial capabilities. The list of documents that can be requested on this purpose has been specified in a ministerial order by the Minister for Economic Affairs of August 28<sup>th</sup>, 2006. Only capabilities corresponding to the amount and scope of the contract can be required to applicants. Furthermore, an applicant can have the capabilities of his subcontractors/partners taken into account as well, if he mention them in the application form;
4. Quality certificates.

If the documents provided by the applicant are not in French language, the public body may require a translation (with mention « certifié conforme à l'original ») duly signed by a sworn translator.

» Documents to be provided together with the offer (article 48)

The applicant must submit a statement of commitment (“acte d’engagement”): this is a document signed by the applicant in which he presents his bid or his proposal in accordance with the conditions specified by the contracting authority.

He may also be required some samples.

» Documents to be provided only if your candidature/offer has been selected (article 46)

The applicant whose bid has been accepted must moreover give the following proofs :

- documents required by article R.324-4 or R.324-7 of the French labour code (text available on <http://www.legifrance.gouv.fr/>).
- document proving that he has fulfilled his fiscal and social obligations by presenting a certificate issued by a competent body. Applicants who have their place of business outside of France are asked to supply a certificate issued by the government of the country of origin. If such a certificate is not supplied by the respective country, it can be replaced by a declaration in lieu of an oath or in the case of countries where such a declaration does not exist by a solemn statement that the applicant makes before the competent judicial or administrative authority, a notary or a qualified professional body of the respective country.

If the above documents can not be provided within the given expiry date, the application is rejected.

**» Tip:**

The applicants are often asked to fill specific forms, in particular form DC4 (letter of application), DC5 (declaration in lieu of an oath which proves above all that the applicant has fulfilled his fiscal and social obligations) and DC8 (statement of commitment, in which the applicant presents his bid in accordance with the conditions specified by the contracting authority). These forms can be downloaded from: <http://djo.journal-officiel.gouv.fr/MarchesPublics> (section “formulaire”) and can be compulsory.

Form DC7 is a document requested from the selected applicant, with which he proves that he has fulfilled his fiscal and social obligations. A non French company can hardly use this form since it must be signed and stamped by the fiscal and social administrations in his country. Therefore, the applicant will have to provide an equivalent document. Applications and bids can generally be communicated to the contracting authority in an electronic form according to the conditions defined in order by the Minister for Economic Affairs of August 28<sup>th</sup>, 2006.

» Who wins? Which award criteria apply?

» The selection of applications

Each acceptable application (which means an application that is conform with the object of the contract and includes all the requested documents) is accepted, with the exception of the restricted calls for tender procedures and the restricted calls for competition. In these procedures the following rule applies: if the number of accepted applications is larger than the number of applicants previously specified and entitled to submit a bid, the applications are selected according to a classification that takes the guarantees, the applicants' technical and financial capacities as well as their professional references into account.

If some documents are missing in the application, the contracting authority may require the missing documents from the applicants within a time-limit that should not exceed 10 days. If such a possibility is given to an applicant, it must concern all applicants.

» The selection of tenders

This selection is made to determine the 'economically most advantageous tender'. Public authorities use various criteria, including cost-in-use, the technical value of the bid, its innovative character, its environmental performance ... Any other criterion can be used if justified by the object of the contract. If only one criterion must be determined, this criterion must be the price.

The determined criteria are specified in the call for competition notice or, if this is not the case, in the contract documents. They must be weighted (in the cases of codified procedures) or at least listed in hierarchical order.

If the quality is the same, preference is given to bids submitted by certain entities, such as industrial production cooperatives or associations of agricultural producers.

» **Tip:**

Technical specifications used for services/works contracts can be defined according to standards or equivalent documents, and/or in terms of functional performance and requirements (refer to order by the Minister for Economic Affairs of August 28<sup>th</sup>, 2006)

The applicant must prove, by any means at its disposal, that the norms or equivalent documents mentioned in its proposal match with the functional performance and requirements. The contracting authority must accept the certificates issued by certification bodies recognised in other Member states.

» Some specifications of the French public procurement code (CMP)

**Splitting of contracts** : The contracting authority must split the contract into different lots whenever possible. Global tenders can only be admitted when the object of the contract makes it difficult to split the contract. Applications and bids are evaluated separately for each lot.

**SMEs participation is highly encouraged** :

- Offers : the contracting authority can ask the applicants to mention which part of the contract they intend to give to a subcontractor and more specifically to an SME ;
- Restricted procedure and competition dialogue : the contracting authority can fix a minimum number of SMEs entitled to present their offer.

**Electronic auctions** : Electronic auctions are only allowed in France for supplies contracts over 135 000 € (for the State) and 210 000 € (territorial authorities).

**e-Procurement** : Applicants that submit their candidature/offer by electronic means are allowed to send a saved copy by mail (under some conditions). As from January 1<sup>st</sup>, 2010, the contracting authority will be allowed to make electronic candidatures/offers compulsory.

**Advance payments/deposits** (articles 86 to 91 of CMP). An advance payment is given to the contractor when the overall contract value is above 50 000 € and for contracts carried out during more than 2 months. Services/works which have given rise to the commencement of the performance of the contract result in an entitlement to the payment of deposits.

» Where can I file a complaint?

» Disputes arising from the award of a contract

An applicant who is in danger of suffering damages as a result of the awarding of a contract can address a motion for injunction to the president of the administrative court if he believes that there was an infringement of publication and competition requirements.

The president of the administrative court (tribunal administratif, TA) can be appealed to before or after the award of the contract. In response he can order the postponement of the signing of the contract until the end of the procedure, for a maximum period of 20 days. If he notices an infringement, he can:

- order the person responsible for the infringement to comply with the obligations;
- suspend the award of the contract or the implementation of any decision regarding the contract;
- annul these decisions and delete the clauses or specifications that are to be included in the contract and that do not comply with the respective obligations.

Within the utilities sectors, the president of the TA may only exercise the first of these rights. However, he can pronounce a penalty against the person responsible for the infringement in order to force him to conform with his obligations.

The president of the TA rules within a twenty-day period. His judgment is definite and can only be contested in the form of an action for annulment before the Conseil d'Etat (Council of State).

Outside of this specific procedure, a claim for damages can be submitted to the administrative court by any person who suffered damage as a result of an infringement of the publication and competition obligations. The TA is not obliged to observe time-limits to make its decision; but an urgent request can be made for a provisional injunction if the infringement cannot be "seriously contested". The judgment can be contested before the administrative court of appeal and as action for annulment before the Council of State.

» Disputes in regard to the performance of a contract

Any dispute in regard to the performance of a contract can be referred to the administrative court by the winner of the contract within common law procedures. He can first address the consulting committee for the amicable settlement of public contract disputes according to article 131. The function of these committees is to propose conditions for an amicable settlement to the concerned parties.

In the area of public contracts, the competent court is the one in the place of jurisdiction of the execution of the contract. If the execution extends beyond the jurisdiction of one specific administrative court or if the place of execution is not specified in the contract, the competent administrative court is the one in the place of jurisdiction of the contracting authority or, in the case of several public authorities, the place where the first signed the contract. However, the parties can agree to address a different court in order to settle their differences.

» Main administrative courts in the Rhône-Alpes region :

Departments Ain (Bourg-en-Bresse), Ardèche (Privas), Loire (Saint-Etienne) and Rhône (Lyon):

Tribunal administratif de Lyon (Administrative Court Lyon)  
184, rue Duguesclin  
F-69433 Lyon Cedex 03  
Tel. ++33 / (0) 478 / 141010  
Internet [http://www.conseil-etat.fr/ta/lyon/index\\_ta\\_co.shtml](http://www.conseil-etat.fr/ta/lyon/index_ta_co.shtml)

Departments Drôme (Valence), Isère (Grenoble), Savoie (Chambéry) and Haute-Savoie (Annecy):

Tribunal administratif de Grenoble (Administrative Court Grenoble)  
Place de Verdun  
Boîte Postale 1135  
F-38022 Grenoble Cedex  
Tel. ++33 / (0) 476 / 429000  
Fax ++33 / (0) 476 / 422269  
Internet [http://www.conseil-etat.fr/ta/grenoble/index\\_ta\\_co.shtml](http://www.conseil-etat.fr/ta/grenoble/index_ta_co.shtml)

» Main administrative court in the Alsace region :

Tribunal administratif de Strasbourg (Administrative Court Strasbourg)  
31, av. de la Paix BP 51038  
F-67070 Strasbourg Cedex  
Tel. ++33 3 88 21 23 23  
Fax ++33 3 88 36 44 66

» The most important contracting authorities

» Rhône-Alpes region

- The 'Conseil Régional de Rhône-Alpes' (Regional Council of the Rhône-Alpes region) :  
[http://www.rhonealpes.fr/default\\_f.cfm?cd=1105&depth=2&dept0=1067&dept1=1105](http://www.rhonealpes.fr/default_f.cfm?cd=1105&depth=2&dept0=1067&dept1=1105)

These are the most important contracting authorities in the eight departments, Ain (01), Ardèche (07), Drôme (26), Isère (38), Loire (42), Rhône (69), Savoie (73), Haute-Savoie (74):

- the General Councils : <http://www.ain.fr/>, <http://www.ardeche.fr/>, <http://www.cg26.fr/>, <http://www.cg38.fr/>, <http://www.loire.fr/>, <http://www.rhone.fr/>, <http://www.cg73.fr/>, <http://www.cg74.fr/>

- the main cities and public institutions of intercommunal cooperation:

Ain :

- Bourg-en-Bresse : <http://www.bourg-en-bresse.org/>
- Oyonnax : <http://www.cc-oyonnax.fr/>
- Communauté de communes du pays de Gex : <http://www.cc-pays-de-gex.fr/>

Ardèche:

- Privas : <http://www.mairie-privas.fr/>
- Annonay : <http://www.mairie-annonay.fr/>
- Communauté de communes d'Annonay (greater Annonay area) : <http://www.cc-bassin-annonay.fr/>

Drôme :

- Valence : <http://www.valence.net/>
- Valence-major, syndicat intercommunal des services de l'économie valentinoise: <http://www.valence-major.com/>

Isère:

- Grenoble : <http://www.grenoble.fr/>
- Saint-Martin-d'Hères : <http://www.ville-st-martin-dheres.fr/>
- Echirolles : <http://www.ville-echirolles.fr/>
- La Métro, communauté d'agglomération de Grenoble (greater Grenoble area) : <http://www.la-metro.org/>
- Vienne : <http://www.vienne.fr/>
- Communauté d'agglomération du pays viennois (greater Vienne area) : <http://www.paysviennois.fr/>

Loire:

- Saint-Etienne : <http://www.saint-etienne.fr/>
- Communauté d'agglomération de Saint-Etienne (greater Saint-Étienne area) : <http://www.agglo-st-etienne.fr/>
- Roanne : <http://www.mairie-roanne.fr/>
- Communauté d'agglomération de Roanne (greater Roanne area) : <http://www.agglo-grandroanne.fr/>

Rhône:

- Lyon : <http://www.lyon.fr/>
- Villefranche-sur-Saône : <http://www.villefranche.net/>
- Vénissieux : <http://www.ville-venissieux.fr/>
- Villeurbanne : <http://www.mairie-villeurbanne.fr/>
- Communauté urbaine de Lyon (greater Lyon area) : <http://www.grandlyon.com/>

Savoie:

- Chambéry : <http://www.mairie-chambery.fr/>
- Aix-les-Bains : <http://www.aixlesbains.com/>

Haute-Savoie:

- Annecy : <http://www.ville-annecy.fr/>

- hospitals, the main ones in the Rhône-Alpes region being :
  - Les maisons de retraite publiques de la ville de Lyon (old people's homes owned by the city of Lyon),
  - Centre hospitalier universitaire de Lyon : <http://www.chu-lyon.fr/>
  - Centre hospitalier universitaire de Grenoble : <http://www.chu-grenoble.fr/>
  - Centre hospitalier universitaire de Saint-Etienne : <http://www.chu-st-etienne.fr/>

## » Alsace region

- The 'conseil régional d'Alsace' (Regional Council of the Alsace region): <http://www.region-alsace.eu/>

In both of the departments, Bas-Rhin (67) and Haut-Rhin (68) the most important contracting authorities are the following:

- the General Council: <http://www.cg67.fr/>, <http://www.cg68.fr/>
- the Departmental Administration of Regional Development :  
<http://www.bas-rhin.equipement.gouv.fr/>, <http://www.haut-rhin.equipement.gouv.fr/>
- the main cities and public institutions of intercommunal cooperation :
  - Bas-Rhin:
    - Strasbourg : <http://www.strasbourg.fr/>
    - Schiltigheim : <http://www.ville-schiltigheim.fr/>
    - The Urban Community of Strasbourg (CUS): <http://www.strasbourg.fr/>
    - Haguenau : <http://www.ville-haguenau.fr/>

Haut-Rhin:

- Colmar : <http://www.ville-colmar.fr/>
- Mulhouse : <http://www.mulhouse.fr/>
- The Intercommunal Transport Services for the Greater Mulhouse Area (SITRAM) : <http://www.sitram.net/>

- hospitals, the main ones in the Alsace region being :
  - Centre hospitalier de Mulhouse : <http://www.ch-mulhouse.fr/>
  - Hôpitaux universitaires de Strasbourg : <http://www.chru-strasbourg.fr/>
  - Centre hospitalier de Haguenau : <http://www.ch-haguenau.fr/>

The coordinates for all these institutions can be found under <http://www.service-public.fr/>, where information is available in French, German, English and Spanish:

- section 'yearbook administration / local administration' for addresses, telephone and fax numbers;
- section 'public internet sites / local sites' for internet sites.

» Where can I obtain information?

» General information on public procurement

Euro Info Centre Grenoble  
Chambre de commerce et d'industrie de Grenoble – Grex  
5, place Robert Schuman  
BP 1509  
F-38025 Grenoble Cedex 1  
Tel. ++33 (0) 4 76 28 28 37 or 43  
Fax ++33 / (0) 4 76 28 28 35  
E-mail [eic@grex.fr](mailto:eic@grex.fr)  
Internet <http://www.grex.fr>

Euro Info Centre Strasbourg  
Chambre de commerce et d'industrie de Strasbourg et du Bas-Rhin  
10 Pl. Gutenberg  
F-67081 Strasbourg Cedex  
Tel. ++33 / (0) 3 88 76 42 35  
Fax ++33 (0)3 88 22 31 20  
E-mail [u.gori.kaminski@strasbourg.cci.fr](mailto:u.gori.kaminski@strasbourg.cci.fr)  
Internet [www.alsace-export.com/euro-info-centre](http://www.alsace-export.com/euro-info-centre)

- <http://djo.journal-officiel.gouv.fr/MarchesPublics> : public procurement portal (access to BOAMP, forms...)
- [http://www.minefi.gouv.fr/themes/marches\\_publics/index.htm](http://www.minefi.gouv.fr/themes/marches_publics/index.htm) : site of the ministry of finance dedicated to public procurement.
- [www.legifrance.org](http://www.legifrance.org) : French legislation (codes, laws, decrees and ministerial decrees)

» Information on labour law and social law

See the 'Direction départementale du travail, de l'emploi et de la formation', DDTEFP – (Departmental Administration for Work, Employment and Professional Training). The DDTEFP of the most important departments have employees who are experts on questions concerning foreign workers. You can check the organigram under <http://www.sdtefp-rhone-alpes.travail.gouv.fr> to find information on the DDTEFP of the Rhône-Alpes region.

Some further general information are also available on <http://www.travail.gouv.fr/informations-pratiques/fiches-pratiques/detachement-salaries-temporary-secondment-of-employees-in-france-zeitweise-entsendung-von-auslandischen-arbeitnehmern-nach-frankreich/detachement-temporaire-france-un-salarie-une-entreprise-etrangere-temporary-secondment-of-employees-in-france-zeitweise-entsendung-von-auslandischen-arbeitnehmern-nach-frankreich-2452.html>

» Information on tax questions

See the information under [www.impots.gouv.fr](http://www.impots.gouv.fr) under the category 'experts' (professionnels). You can also contact your local Euro Info Centre for answers on tax questions.

## » Public Procurement in Italy: Piedmont Region

» What are the legal regulations for public procurement?

» Which regulations apply above and below the thresholds?

In Italy public procurement above and below the thresholds is covered by the new Code on public procurement for works, service and supply contracts, approved by the Decreto Legislativo n. 163 of 12 April 2006.

The above-mentioned Code has assembled the Italian legislation on public procurement in a unique legislative reference and thus also implementing the European Directives n. 2004/18/EU e 2004/17/EU.

Come into force on 1 July 2006, the Code has been integrated by the Italian Law n. 228/2006 that has introduced a postponement up to February 1<sup>st</sup> 2007 for some articles (art. 3 paragraph 7, art. 33 paragraphs 1, 2, 3, art. 49 paragraph 10, art. 53 paragraphs 2, 3, art. 56, art. 57, art. 58, art. 59, ,), so as to permit the issuing of new amending decrees.

The first of these Decrees, Decreto Legislativo n. 6 of 26 January 2007, by introducing some formal and substantial corrections, has fixed a further postponement from 1 February 2007 to 1 August 2007 of the norms contained in articles 33, 53 paragraph 2 and 3, 56, 57, 58, 59, , of the Code.

A second amending Decree, up to now approved only on a preliminary basis, will regulate the negotiated procedure with or without prior publication of a contract notice , framework agreements, control on public contracts, safety at work and SOA certification (Società Organismi di Attestazione/Society of Attesting Offices).

The Code of public procurement is available under: <http://www.to.camcom.it/alpps>

» Which regulations apply for the single regions?

Art. 4 of the Code, referring to art. 117 paragraph 2 of the Constitution that identifies the subjects that have to be ruled at legislative level by the State only, imposes on Regions and Autonomous Provinces the respect of the rules fixed by the Code on the following:

- qualification and selection of the bidders
- tendering procedures
- award criteria
- subcontracting
- check functions of the Supervisory Authority for Public Contracts of works, services and supplies
- planning activity
- safety plan
- drawing up and execution of the contracts

- legal disputes

It is however evident that article 4 of the Code cannot give a binding interpretation of article 117 of the Constitution since this falls exclusively on the Constitutional Court. It is therefore possible that the list of the subjects conferred to the national legislation is not to be considered as definitive.

For the subjects that, according to art. 117 paragraph 3 and 4 of the Constitution, fall under the legislative competence of the Regions, on a concurrential or exclusive basis, the rules of the Code apply in the context of each Region only in the case that the application legislation has not come into force yet.

Paragraph 4 of article 4 states that for the above-mentioned subjects the rules fixed by the Code have effect starting from the date of the coming into force of the regional legislation.

- » Regional regulations (Piedmont Region)

Up to now the Piedmont Region has not issued any laws on this matter, so all rules contained in the Code apply.

» **Tip:**

National laws are available on these websites:

- <http://www.gazzettaufficiale.it>
- [www.parlamento.it](http://www.parlamento.it)

Regional laws are available under:

- <http://arianna.consiglioregionale.piemonte.it/>

- » What are the national and regional media for the publication of contract notices?

- » Above the thresholds

Public contract notices above the thresholds are subject to European regulations. Therefore they have to be communicated to the Office for Official Publications of the European Union in order to be published in the Supplement of the Official Journal of the European Communities (OJS) and in the TED database (see <http://ted.europa.eu/> ).

In addition, as stated by article 66 paragraph 7 of the Code, invitations to tender must also be published on:

- The Gazzetta Ufficiale della Repubblica Italiana, special supplement
- Website of the contracting authority
- Website of the Ministry of Infrastructures and Transports (no later than 2 working days starting from the publication on the Italian O.J. (GU- Gazzetta ufficiale della Repubblica Italiana), mentioning the publication references on Italian the O.J.: [www.infrastrutturetrasporti.it/appalti](http://www.infrastrutturetrasporti.it/appalti))
- The Regional website dedicated to public tenders

- At least two selected national newspapers
- At least two selected regional newspapers

» **Tip:**

- The Gazzetta ufficiale della Repubblica Italiana, [www.gazzettaufficiale.it](http://www.gazzettaufficiale.it), section II – Public tenders. The Italian O.J. of the latest 60 days are published on this website.
- Regional public tenders for works, above and below thresholds, are published on the website: <http://www.regione.piemonte.it/oopp/index.htm>

- Most important national newspapers:

Corriere della Sera <http://www.corriere.it>

La Repubblica <http://www.repubblica.it>

Il Sole 24 Ore <http://www.ilsole24ore.com>

- Most important regional newspaper:  
La Stampa <http://www.lastampa.it>

» Below the thresholds

According to articles 122, paragraph 1 and 124, paragraph 1, of the Code, for tenders below the thresholds the rules on the obligation of publication and communication at supranational level are not applied.

However there remains the obligation of publication on the Gazzetta Ufficiale della Repubblica Italiana and some other obligations in terms of advertising, that can vary on the basis of the type of tender (works, services or supplies).

» Contracts for works below the thresholds

According to article 122 of the Code for public tenders, two different publication procedures are foreseen on the basis of the value of the tender:

- a) public works contracts equal to or above € 500.000 are published on:
- The Gazzetta Ufficiale della Repubblica Italiana, special supplement
  - Website of the contracting authority
  - Website of the Italian Ministry of Infrastructures and Transports (no later than 2 working days starting from the publication on the Italian O.J. (GU - Gazzetta ufficiale della Repubblica Italiana), mentioning the publication references on the Italian O.J.: [www.infrastrutturetrasporti.it/appalti](http://www.infrastrutturetrasporti.it/appalti))
  - The Regional website dedicated to public tenders (mentioning the publication references on the Italian O.J.). If the works have a regional impact, the publication on

this site can replace the publication on the website of the Italian Ministry of Infrastructures and Transports.;

- In form of an extract, at least on one of the most important national newspapers or at least on 1 of the most important local newspapers (for the area of the execution of the contracts)
- b) public works contracts below € 500.000 are published on:
  - The notice board of the Municipality of execution of the works
  - The notice board of the contracting authority
- » Services contracts and supplies contracts below the thresholds

According to article 124, paragraph 5, of the Code, these are published on:

- The Gazzetta Ufficiale della Repubblica Italiana, special supplement
- Website of the Italian Ministry of Infrastructures and Transports (no later than 2 working days starting from the publication on the Italian O.J. (GU - Gazzetta ufficiale della Repubblica Italiana), mentioning the publication references on the Italian O.J.: [www.infrastrutturetrasporti.it/appalti](http://www.infrastrutturetrasporti.it/appalti))
- The Regional website dedicated to public tenders (mentioning the publication references on the Italian O.J.). If the works have a regional impact, the publication on this site can replace the publication on the website of the Italian Ministry of Infrastructures and Transports
- Notice Board of the contracting Authority

» Useful Addresses

Regione Piemonte  
Direzione Opere Pubbliche - Osservatorio Lavori Pubblici  
Corso Bolzano 44 Torino  
Tel. +39 011.4324746  
Fax +39 011.4322796  
Posta elettronica: [serviziobandi@regione.piemonte.it](mailto:serviziobandi@regione.piemonte.it)

» Which procurement procedures are used?

Contrary to what was foreseen in the legislation in force before the new Code for public procurement, there isn't any distinction in the procedures for the selection of the bidders for tenders above and below threshold.

These procedures can be described as:

- 1) Ordinary procedures (open or restricted)
- 2) Procedures accepted only on some specific cases:
  - Negotiated procedure with prior publication of a contract notice (article 56)
  - Negotiated procedure without prior publication of a contract notice (article 57)
  - Competitive dialogue (article 58)
  - Framework Agreement (article 59)
  - Dynamic purchasing system (art. 60)

As afore mentioned, articles 53, paragraphs 2 and 3, articles 56, 57, 58, 59 are postponed up to 1 August 2007.

» **Tip:**

Although the open procedure or public tender offers the best opportunities for participation in a procurement procedure, enterprises are also invited to try to make bids within restricted or negotiated procedures.

However, in the case of restricted and negotiated procedures, the bidders should increase their marketing activities in order to be accepted in the group of potential bidders.

» Which time-limits must be considered?

» Which time-limits apply for tenders above the thresholds?

The time-limits are regulated by article 70 of the Code, implementing the provisions of article 38 of the European Directive 2004/18.

» Open calls for tender

The time-limits for the receipt of tenders from the day of dispatching the contract notice:

- Must not be less than 52 days
- Can be reduced from 36 to 22 days by means of the publication of the Prior Information notice
- Are reduced to 7 days in case of electronic transmission
- Are reduced to 5 days in case of free, direct and full access to the specification and contract documents

» Restricted calls for tender

The time-limits for the receipt of requests to participate

- Must not be less than 37 days
- Can be reduced to 7 days in case of electronic transmission
- Can be reduced from 36 to 22 days by means of the publication of the Prior Information notice

The time-limits for the receipt of tenders from the date on which the invitation is sent:

- Must not be less than 40 days
- Are reduced to 5 days in case of free, direct and full access to the specification and contract documents documentation

» Negotiated procedure (negotiated calls for tender)

The time-limits for the receipt of requests to participate (only for negotiated procedures with prior publication of a contract notice):

- Must not be less than 37 days
- Are reduced to 7 days in case of electronic transmission

The time-limits for the receipt of tenders from the date on which the invitation is sent:

- Are fixed by the contracting authority but they must not be less than 20 days (except for urgent reasons)

» Competitive dialogue

The time-limits for the receipt of requests to participate:

- Must not be less than 37 days
- Are reduced to 7 days in case of electronic transmission

The time-limits for the receipt of tenders from the date on which the invitation is sent:

- Are fixed by the contracting authority but they must not be less than 20 days (except for urgent reasons)

Article 70, paragraph 11 and 12 provide further details on the time-limits for the receipt of the bids in case of special urgent reasons.

» Restricted and negotiated procedures (with prior publication of a contract notice)

The time-limits for the receipt of requests to participate:

- Must not be less than 15 days from the day of publication of the tender notice on the OJ (GURI)

The time-limits for the receipt of bids (for restricted procedures only):

- Must not be less than 10 days from the day of the receipt of the letter of invitation

» Negotiated procedures (without prior publication of a contract notice) and Competitive dialogue

Time-limits for the receipt of requests to participate and for the receipt of the bids are set by the awarding authority on the basis of the degree of complexity of the object of the contract and of the average time necessary to prepare bids.

» **Tip:**

When tenders are possible only after a visit to the site or after an on-the-spot check of documents annexed to the contract documents, the time-limit for the receipt of tenders must be extended accordingly.

» Which evidence can be requested in the course of an application?

The performance of public works is awarded only to companies that can prove to the respective authority that they possess the requisites required.

These requisites can be:

- general requisites (moral qualification, reliability, correct management, non-existence of penal sentences and of other measures foreseen by the Italian legislation “antimafia” )
- technical and economic-financial capacity (bank statements of at least 2 financial institutions, balance sheet or an extract of the same, a declaration of the total company turn-over and of the amount corresponding to the services or supplies object of the tender performed by the company in the last previous years).
- technical and professional capacity (registration in the local rolls or registers, certificates attesting the conformity to quality or environmental friendly standards)

With regard to public works contracts with a value above Euro 150000, article 5 of the Italian Code states that the Italian enterprises must possess the SOA (Società Organismi di Attestazione/Society of Attesting Offices) certification.

Articles 49 and 50 of the Code rule in details the possibility for an Italian company of choosing the alternative solution known as “avalimento”. The “avalimento” consists in the possibility for economic operator to rely on the capacities of other entities to prove to the contracting authority that it will have at its disposal the resources necessary (economic, financial, technical-organizational requisites) for the execution of the contract.

An ‘antimafia certificate’ is also required according to article 247 of the Code. Foreign enterprises are only obliged to present an “antimafia certificate” if they have a registered office or branch in Italy.

“Antimafia certificates” are equivalent to official communications or written information to the local Prefectures (Article 6 paragraph 1 of Italian Decree "DPR 3/6/1998 n. 252" establishes that, to perform a contract with the Italian public administration it is necessary to attest that there aren't any penal proceedings as private citizen nor any mafia-like methods that could influence the selection of the companies). This certificate must contain the specific reference to article 10 of the Italian law 31/5/1965 n. 575 and following modifications. It is valid for 6 months starting from the day of issuing.

» **Tip:**

Foreign enterprises can ask the contracting authorities whether they need to submit all the requested evidence or not.

Article 47 paragraph 2 of the Code states that these enterprises can produce documentation in conformity with the current legislation in their own country, that is appropriate documentation attesting the possess of all the necessary requisites for the selection and participation of Italian enterprises to the tenders. If there are any doubts, it is suggested that all the documentation is sent in order to prevent any risk of exclusion.

Art. 38, paragraph 5, also specifies that, if no document or certificate can be issued by another Member State, it is sufficient to provide a sworn statement or a statement made in front of a competent law or administrative authority, of a notary or of a professional body qualified in the country of origin or of provenance.

» **Who wins? Which award criteria apply?**

» Award criteria for tenders above the thresholds

In Italy, there are two types of award criteria (awarding the act of attesting the most advantageous bid and of selecting the best bidder): the lowest price and the economically most advantageous tender.

The new Code has introduced a set of novelties as regards the criteria that are useful for the selection of the economically most advantageous bid. These criteria are listed in article 83 paragraph 1 of the Code.

In particular it is now possible to take into consideration the environmental characteristics of the bid, the conformity to social needs and the promotion of a sustainable development.

» Award criteria for tenders below the thresholds

The award criteria for public contracts below the thresholds are the same as those for contracts above the thresholds.

» **Tip:**

The weight attributed to each criterium useful to evaluate the most advantageous bid must be published in the contract notice and in the specification. This is also meant to limit the discretionary power of the contracting authority in the selection phase ( article 83 of the Code).

» Works, services and supplies in economy

Art. 125 of the Code establishes the possibility for public Administrations, subject to the issuing of an internal specific regulation, to award contracts of works (up to a value of

200.000 EUR) and of services and supplies (up to a value of 211.000 EUR) with a simplified procedure.

This procedure consists in consulting at least five economic operators, selected through a market survey or from lists of economic operators previously formed.

In this case the traditional means of publication are not required. However it is necessary to conform to a minimum adequate advertising , as foreseen by the Commission Communication n. 2006/C-179/02 (publication at least on the website of the contracting authority).

#### » Where can I file a complaint?

##### » For tenders above the thresholds

According to Art. 244 of the Code the court entitled to settle legal disputes regarding the performance of public procurement is the ordinary tribunal.

It is therefore possible to contest the awarding procedure by applying to the TAR (Regional Administrative Tribunal) or, as an exception, to the President of the Republic.

The legal dispute also establishes other proceedings:

- settlement out of court (Art. 239)
- mild agreement (Art. 240)
- arbitration (Art. 241)

The Supervisory Authority for Public Contracts may conduct inspections, even at the request of private persons, to check the correctness of the procedures and the award (see Art. 6 paragraph 6 of the Code)

##### » For tenders below the thresholds

The same procedures have to be applied for tenders below the thresholds.

#### » **Tip:**

The website for the Supervisory Authority for Public Contracts can be found under

<http://www.autoritalavoripubblici.it>

The website for the Supervisory Authority for Public Contracts- Arbitration Court can be found under

<http://www.autoritalavoripubblici.it/Paginacamera.html>

## » The most important contracting authorities in Piedmont:

### Local authorities

- Regione Piemonte [www.regione.piemonte.it](http://www.regione.piemonte.it)
- Provincia di Torino [www.provincia.torino.it](http://www.provincia.torino.it)
- Provincia di Cuneo <http://www.provincia.cuneo.it>
- Provincia di Asti <http://www.provincia.asti.it>
- Provincia di Alessandria <http://www.provincia.alessandria.it>
- Provincia di Vercelli <http://www.provincia.vercelli.it>
- Provincia di Novara <http://www.provincia.novara.it>
- Provincia del Verbano Cusio Ossola <http://www.provincia.verbania.it>
- Provincia di Biella <http://www.provincia.biella.it>

### The most important communities:

- Città di Torino [www.comune.torino.it](http://www.comune.torino.it)
- Alessandria <http://www.comune.alessandria.it>
- Asti <http://www.comune.asti.it>
- Biella <http://www.comune.biella.it>
- Cuneo <http://www.comune.cuneo.it>
- Novara <http://www.comune.novara.it>
- Verbania <http://www.comune.verbania.it>
- Vercelli <http://www.comune.vercelli.it>
  
- Comunità montane piemontesi <http://www.uncem.it/stories/2003/11/26/linkCcmmPiemonte.html>
- Camere di commercio piemontesi <http://www.pie.camcom.it>
- Camera di commercio di Torino <http://www.to.camcom.it>

### Health Authorities:

- List of local health centres and hospitals  
[http://www.regione.piemonte.it/sanita/program\\_sanita/link\\_asl/index.htm](http://www.regione.piemonte.it/sanita/program_sanita/link_asl/index.htm)
- Istituto zooprofilattico sperimentale Piemonte, Liguria, Valle d'Aosta <http://www.izsto.it>

### Transports:

- Autostrada Torino - Savona - Moncalieri <http://www.tosv.it>
- Azienda Torinese Mobilità <http://www.comune.torino.it/gtt>
- Sagat Aeroporto di Torino <http://www.aeroportoditorino.it>

### Environment / refuse disposal / water / energy

- Azienda Multiservizi Igiene Ambientale Torino Spa <http://www.amiat.it>
- C.I.D.I.U. Consorzio Intercomunale di Igiene Urbana <http://www.cidiu.to.it>
- Società Metropolitana Acque Torino <http://www.smatorino.it>
- Azienda cuneese dell'acqua <http://www.acda.it>
- Asti servizi pubblici spa <http://www.aspat.it>
- Azienda Territoriale Energia Ambiente Vercelli S.p.a. <http://www.atenaweb.net>
- Iride Energia <http://www.iride-energia.it>

### Culture

- Ente diritto allo studio Torino <http://www.edisu.piemonte.it>
- Università del Piemonte Orientale <http://www.unipmn.it>
- Politecnico di Torino <http://www.polito.it>
- Università degli Studi di Torino <http://www.unito.it>
- Teatro Regio Torino <http://www.teatroregio.torino.it>
- Virtual Reality & Multimedia Park <http://www.vrmmp.it>
- ETF – European Training Foundation [www.etf.eu.int](http://www.etf.eu.int)

» Where can I obtain information?

Euro Info Centre IT 375  
Camera di commercio di Torino  
Via San Francesco da Paola 24  
10123 - TORINO  
Tel. +39 011 5716341  
Fax +39 011 5716346  
Email: [eic@to.camcom.it](mailto:eic@to.camcom.it)  
<http://www.to.camcom.it/eic>

Regione Piemonte  
Direzione Opere Pubbliche - Osservatorio Lavori Pubblici  
Corso Bolzano 44 Torino  
Tel. +39 011.4324746  
Fax +39 011.4322796  
Posta elettronica: [serviziobandi@regione.piemonte.it](mailto:serviziobandi@regione.piemonte.it)  
<http://www.regione.piemonte.it/oopp/osservatorio/index.htm>

For information on the other Italian regions of the Alpine Space you can contact:

Valle d'Aosta  
EURO INFO CENTRE IT 381  
Attiva srl  
P.zza Repubblica, 15 - 11100 Aosta  
Tel. 39 0165 305534  
Fax 39 0165 305539  
E-mail [attiva@ao.camcom.it](mailto:attiva@ao.camcom.it)  
Internet [www.ao.camcom.it](http://www.ao.camcom.it)

Liguria  
EURO INFO CENTRE IT 363  
Unioncamere Liguria  
Via Garibaldi 6 - 16124 Genova  
Tel +39 0102704251-324  
Fax +39 010 2704297  
E-mail [euroinfo@lig.camcom.it](mailto:euroinfo@lig.camcom.it)  
Internet <http://www.lig.camcom.it/eicliguria/index.php>

Lombardia  
EURO INFO CENTRE IT 351  
CCIAA Milano  
Via Camperio, 1 - 20123 Milano  
Tel +39 02 85155244  
Fax +39 02 85155308  
E-mail [eic@mi.camcom.it](mailto:eic@mi.camcom.it)  
Internet <http://www.mi.euroinfocentre.it>

Trentino Alto Adige  
EURO INFO CENTRE IT 392  
CCIAA Trento  
Via Calepina 13 - 38100 Trento  
Tel. +39 0461 887282  
Fax +39 0461 983069  
E-mail [sprint@tn.camcom.it](mailto:sprint@tn.camcom.it)  
Internet [www.tn.camcom.it](http://www.tn.camcom.it)

Friuli Venezia Giulia  
EURO INFO CENTRE IT 388  
INFORMEST  
Via Cadorna, 36 - 34170 Gorizia  
Tel +39 0481 597411  
Fax +39 0481 537204  
E-mail [eicit388@informest.it](mailto:eicit388@informest.it)  
Internet <http://eic.informest.com>

Veneto  
EURO INFO CENTRE IT 378  
Unioncamere Veneto  
Via Sansovino, 9 - 30173 Venezia Mestre  
Tel +39 041 2581666  
Fax +39 041 2581600  
E-mail [europa@eicveneto.it](mailto:europa@eicveneto.it)  
Internet [www.eicveneto.it](http://www.eicveneto.it)

## » Public Procurement in Austria

### » What are the legal regulations for public procurement?

2006, the Federal Procurement Act (Bundesvergabegesetz) was revised on the basis of the new European Union directives. It is available now in a new version and was published in the BGBl I Nr.17/2006. It applies above and below the EU thresholds. The law describes a number of differences for contracts above and below the thresholds. As a consequence, there are numerous deviations in many fields.

Further relevant regulations for the award of public contracts are the notices of the Federal Chancellor for the transmission of publications (BGBl II 36/2006), the threshold value regulation (BGBl II 193/2006), the publication medium regulation, the European Union form for standard and the European Union CPV regulation.

### » What are the national and regional media for the publication of contract notices?

#### » Publication rules for contracts above the thresholds only

Public contracts with a value above the thresholds specified in EU law, must be published centrally in the Supplement to the Official Journal of the European Communities and in the EU database TED (Tenders Electronic Daily) (see part 1).

#### » Publication rules for contracts above and below the thresholds

Federal Level:

The 'Amtliche Lieferungsanzeiger zur Wiener Zeitung' was established by decree for the publication of contracts awarded by the federal government. It can be found on the

internet under: **www.wienerzeitung.at**. Numerous contracting authorities also publish their contracts electronically, for example under: **www.bbg.gv.at** and **www.bmwa.gv.at**.

‘Länder’:

In the federal "Länder" contract notices are published in various regional media and newsletters from the regional governments.

Links to the governments of the "Länder" can be found under:

**http://www.ris.bka.gv.at/linkliste**. Details on media that publishes tender notices can be obtained at the Euro Info Centre Linz, e-mail: eic@wkoee.at.

Internet portals such as [www.auftrag.at](http://www.auftrag.at), [www.vergabeportal.at](http://www.vergabeportal.at) and [www.ausschreibungen.at](http://www.ausschreibungen.at) gather contracts from different sources. These portals offer a relatively comprehensive overview of a majority of Austrian contracts above and below European Union thresholds.

» Which procurement procedures are used?

The Federal Procurement Act includes the procurement procedures listed below. Each of these procedures can be used for all contracts below the thresholds, however, only some of them for contracts above the thresholds:

- open procedure (above and below the thresholds)
- non open procedure with prior publication (above and below the thresholds)
- non open procedure without prior publication (above and below the thresholds)
- negotiated procedure with prior publication (above and below the thresholds)
- negotiated procedure without prior publication (above and below the thresholds)
- direct award without prior publication (below the thresholds)
- electronic auction (below the thresholds)
- framework agreement (below the thresholds)

The Federal Procurement Act establishes – in addition to the EU thresholds – further thresholds that regulate the use of the different procurement procedures.

**Works contracts**

Thresholds in EUR (without VAT)	Procedure	Legal basis
< 40.000	Direct shopping	§ 41 (1)
< 80.000	Negotiated procedure without publication (usually $\geq 3$ companies invited to participate)	§ 38 (2)
< 120.000	Non open procedure without publication ( $\geq 5$ companies invited)	§ 37
< 350.000	Negotiated procedure with publication	§ 38 (1)
< 5.278.000	Open procedure or non open procedure with publication	§ 27

	Open procedure or non open procedure with publication, EU wide	§§ 27 + 50
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### Supply and service contracts

Thresholds in EUR (without VAT)	Procedure	Legal basis
< 40.000	Direct shopping	§ 41 (1)
< 60.000	Negotiated procedure without publication (usually $\geq 3$ companies invited to participate)	§ 38 (2)
< 80.000	Non open procedure without publication ( $\geq 5$ companies invited)	§ 37
< 105.500 ZBS: < 68.500	Negotiated procedure without publication with only one company if a competition is not useful because of the costs of the procedure (only in the field of creative services!)	§ 38 (3)
< 211.000 ZBS: < 137.000	Negotiated procedure with publication	§ 38
< 211.000 ZBS: < 137.000	Open procedure or non open procedure with publication	§§ 27
	Open procedure or non open procedure with publication, EU wide	§§ 27 + 50

ZBS = Central procurement by institutions on state level

#### » Which time-limits must be considered?

#### » Which limits apply above the thresholds?

Above the thresholds, Austrian public procurement law refers to the European time-limits. (see section 1)

#### » Which limits apply below the thresholds?

In regard to contracts below the thresholds, the contracting authority must grant at least 14 days for the receipt of applications for participation in the procurement procedure. The time-limit for the receipt of tenders must be at least 22 days in the open and in the non open procedure. This period can only be shortened for well-founded reasons, especially in urgent cases.

#### » Which evidence can be requested in the course of an application?

All the evidence that can be requested is specified in paragraph 68 and the following of the Federal Procurement Act. In regard to the evidence of authorization, technical,

financial and economic capacities and reliability of a company, the contracting authority is obliged to indicate the type of requested evidence already in the public notification or in the invitation to tender.

» **Tip:**

The “Auftragnehmerkataster Österreich” (ANKÖ) - Register of Tenderers for Austria - constitutes a pertinent generally accessible list prepared by a neutral body. A company can ask to be registered in this list as a way to prove its authorization, its reliability as defined in the Federal Procurement Act and its economic and financial capacities. Once a company is registered in the ANKÖ register, contracting authorities have on-line access to its services. In addition companies can continue to make use of the possibility of providing separate evidence for each procurement procedure. A company is not obliged to register in the ANKÖ.

Contact address:

Auftragnehmerkataster Österreich ANKÖ (Register of Tenderers for Austria)  
1201 Wien, Postfach 142, Handelskai 94-96  
Tel. ++43 / (0) 1 / 333 6666-DW  
Fax ++43 / (0) 1 / 333 6666-19  
E-mail [sekretariat@ankoe.at](mailto:sekretariat@ankoe.at)  
Internet <http://www.ankoe.at>

» Who wins? Which award criteria apply?

» Principle of best tender – principle of tender with the lowest price

The contract notice or the contract documents should specify whether the award will be based on the technically and economically most advantageous tender or on the tender with the lowest price. In principle the contracting authority is obliged to award the contract to the technically and economically most advantageous tender. Only in exceptional cases when the quality standard of the requested services is defined clearly and unequivocally so that qualitatively equivalent tenders are assured, can the award also be based on the lowest price.

If the contract is to be awarded to the technically and economically most advantageous tender, the contracting authority must indicate all award criteria according to their importance in the contract notice. This means that the contracting authority must weight the award criteria and publish this weighting in the contract notice. In exceptional cases the contracting authority can also indicate a margin or only indicate the award criteria in the order of importance attributed to them.

» What should you keep in mind?

The following rules apply to the award of public contracts above and below the thresholds:

- Prepare your tender in accordance with the award criteria specified in the contract notice. This means that you should consider in particular the order in which the criteria are listed, which will be the order of importance.
- In principle the contract will be awarded to your company if your tender was the best, i.e. if it was the technically and economically most advantageous tender in accordance with the criteria indicated in the contract notice. Remember that contracts are not automatically awarded to the tender with the lowest price.
- If no criteria are indicated, the selection must solely be based on the price. You will obtain the contract if you offered the lowest price.

» **Tip:**

Remember that once the deadline for the receipt of tenders has expired, you are not allowed to make any changes to your tender and you cannot withdraw it. Furthermore it is only permitted to transfer specifically defined partial performances to subcontractors and not the entire contract.

» [Where can I file a complaint?](#)

For tender procedures on state level, review procedures are carried out by the “Bundesvergabeamt”, irrespective of the size of the contract.

*Review procedures by the “Bundesvergabeamt”*

Before the award of the contract bidders can request a review procedure, if an illegality causes a damage to them. Illegal decisions of a public contractor could be declared null and void.

*Declaraty procedure by the “Bundesvergabeamt”*

Applications for a declaraty procedure can be submitted within six months as from the knowledge of the award of the contract, the repeal of the tender procedure or from the time at which one could have had knowledge (30 days if the award was contrary to law). They are inadmissible, if the breach could have been exhibited in a review procedure. The Bundesvergabeamt can declare that the award wasn't carried out according to the principle of the lowest price or the economically most advantaged offer. In the case of direct shopping, it can assert whether the direct shopping was legally correct. After a repeal it can decide whether the repeal was illegal.

A bidder has the right for compensation if the rules of the BvergG were breached culpably. The compensation covers at least the costs for the calculation of the offer and for the participation in the tender procedure. A bidder may submit a claim at a court of

law if the declaraty procedure was successful. There is no right to get compensation if the competent review body declares that the bidder wouldn't have had the chance to win the contract even if the law would have been respected or if it would have been possible to place an injunction or to open a review procedure.

Address of the Bundesvergabeamt:

Bundesvergabeamt (BVA)  
Praterstraße 31,  
AT-1020 Wien  
Tel. +43 (0) 1 / 21377-200  
Fax +43 (0) 1 / 21377-291  
Internet: <http://www.bva.gv.at>

### *The federal Länder*

If a contract procedure by the Länder or on local level is concerned the review procedure is regulated by law of the Länder. Competent bodies for the review are the independent administrative senates (,unabhängige Verwaltungssenate') (in Vienna and Salzburg the indepentend procurement control senate (,Vergabekontrollsenat')), which open a review procedure upon application. In some cases the independent administrative senates have to try an arbitration.

The independent administrative senates are usually also responsible for declaraty procedures. A company can apply for a declaraty procedure if he was damaged by a breach of law. Links to the Länder governments in austria are available on <http://www.ris.bka.gv.at/linkliste>, and on the homepage of the Bundeskanzleramt <http://www.bka.gv.at>

A list of the competent review bodies of the Länder is available at the Euro Info Centre Linz (e-mail: [eic@wkoee.at](mailto:eic@wkoee.at))

### » The most important contracting authorities

- Amt der Tiroler Landesregierung, Innsbruck, <http://www.tirol.gv.at/organisation/index.shtml>
- Tiroler Landeskrankenanstalten GmbH, Innsbruck, <http://www.tilak.at>
- Tiroler Wasserkraftwerke AG, Innsbruck, <http://www.tiwag.at>
- Brenner Eisenbahn GmbH, Innsbruck, <http://www.beg.co.at>
- Österreichische Autobahnen und Schnellstraßen AG, Graz, [www.oesag.at](http://www.oesag.at)
- Alpen Straßen AG, Innsbruck, [www.asg.co.at](http://www.asg.co.at)
- Tiroler Flughafenbetriebsgesellschaft mbH, Innsbruck, [www.innsbruck-airport.com/kontakt.htm](http://www.innsbruck-airport.com/kontakt.htm)

On the federal level due to budgetary restraints and to optimize public procurement procedures a central purchasing body (the so called Bundesbeschaffung GmbH) has been established in 2001 to handle the procurement of services and supplies for the federal state and its companies. <https://bbg.portal.at/>

## » Where can I obtain information?

Wirtschaftskammer Tirol  
Service Point Recht  
Meinhardstraße 14  
AT-6020 Innsbruck  
Tel. ++43 / (0) 590905-1111  
Fax ++43 / (0) 590905-1386  
E-mail: [rechtsabteilung@wktirol.at](mailto:rechtsabteilung@wktirol.at)

Euro Info Centre Linz  
Wirtschaftskammer Oberösterreich  
Mozartstraße 20  
4020 Linz  
Tel. +43 (0) 5 90 909-3452  
Fax +43 (0) 5 90 909-3459  
E-mail: [ingrid.kumar@wkoee.at](mailto:ingrid.kumar@wkoee.at)  
Internet: [www.wko.at/ooe/eic](http://www.wko.at/ooe/eic)

## » Public Procurement in Switzerland: Cantons Ticino, Vaud and Zürich

### » What are the legal regulations for public procurement?

### » Which regulations apply above the thresholds?

Since Switzerland does not belong to the European Union, the European directives do not apply to public procurement in Switzerland. However, Switzerland has signed various international agreements so that larger contracts are subjected to procurement regulations that are at least similar to the ones valid in the European Union. Within the framework of these agreements a system of thresholds was introduced, which largely correspond to the sums specified in the EU directives.

The international agreements signed by Switzerland include the following:

- The EFTA Agreement of January 4, 1960
- The WTO Procurement Agreement (GPA) of April 15, 1994
- The Agreement between the European Community and the Swiss Confederation on certain Aspects of Public Procurement of June 21, 1999 (Bilateral Agreements I)

As a result of the bilateral agreement between Switzerland and the EU, all public contracts above the EU thresholds are freely accessible to all Swiss companies, even at the local level. This means that you have the same chances for bidding as your competitors from the EU countries. The reverse applies as well.

Specifications from international agreements have been adapted by the Swiss Public Procurement Laws.

The following national laws and regulations apply in Switzerland:

- Bundesgesetz über das öffentliche Beschaffungswesen, BoeB - Federal Law on Public Procurement - of December 16, 1994
- Bundesgesetz über den Binnenmarkt (Binnenmarktgesetz, BGBM) of October 6, 1995
- Verordnung über das öffentliche Beschaffungswesen, VoeB - Decree on Public Procurement – of December 11, 1995
- Vergaberichtlinie zur Interkantonalen Vereinbarung über das öffentliche Beschaffungswesen (VRoeB) – Intercantonal Agreement on Public Procurement - of November 25, 1994/March 15, 2001

This legislation is supplemented by a number of laws and agreements that apply in the individual cantons.

This includes:

For the canton Ticino

- Legge sulle commesse pubbliche, LCPubb - Law on Public Procurement - of February 20, 2001
- Regolamento di applicazione della legge cantonale sulle commesse pubbliche, RLCPubb – Regulation on the Application of the Cantonal Law on Public Procurement - of October 1, 2001

For the canton Vaud

- Loi du 24 juin 1996 sur les marchés publics, LVMP - Law on Public Procurement of June 24, 1996
- Règlement du 8 octobre 1997 d'application de la loi du 24 juin 1996 sur les marchés publics (RMP) - Regulation of October 8, 1997 on the Application of the Law of June 24, 1996 on Public Procurement

And for the canton Zürich

- Submissionsverordnung vom 23. Juli 2003 - Submission Decree of July 23, 2003
- Gesetz über den Beitritt des Kantons Zürich zur Interkantonalen Vereinbarung des öffentlichen Beschaffungswesens – Law on the accession of the canton of Zurich to the Intercantonal Agreement on Public Procurement

» Which regulations apply below the thresholds?

In regard to contracts below the thresholds

- The 'Interkantonale Vereinbarung über das öffentliche Beschaffungswesen (IvoeB) vom 25. November 1994' - The Intercantonal Agreement on Public Procurement of November 25, 1994 applies here as well.

In addition the cantonal regulations mentioned above also apply to public contracts below the thresholds.

However, in regard to public contracts with a value below the thresholds, Switzerland and the EU countries have only committed themselves to asking their contracting authorities not to discriminate against tenderers from the other parties to the agreement. This “best-endeavour clause“ is not enforceable.

» **Tip:**

You can download the federal laws and all cantonal decrees from the Information System on Public Procurement in Switzerland at this website: **[www.simap.ch](http://www.simap.ch)**.

» What are the national and regional media for the publication of contract notices?

» Above and below the thresholds:

In Switzerland public contract notices are published in the following media:

- Schweizer Handelsamtsblatt SHAB [www.shab.ch](http://www.shab.ch) – Official Swiss Journal of Commerce = Feuille Officielle Suisse du Commerce (FOSC) [www.fosc.ch](http://www.fosc.ch), Foglio ufficiale svizzero di commercio (FUSC) **[www.fusc.ch](http://www.fusc.ch)**

All contracts awarded by the federal government are published in the “Schweizer Handelsamtsblatt“. However, contracts awarded by the cantons and communities are rarely published in this journal.

In addition Switzerland has set up a system for the electronic award of public contracts:

- SIMAP Switzerland – Information System on Public Procurement in Switzerland (SIMAP 1) = Système d’information sur les marchés publics en Suisse, Sistema informativo sulle commesse pubbliche in Svizzera **[www.simap.ch](http://www.simap.ch)**

Furthermore there are various official cantonal journals, in which both cantons and communities publish public contracts. The publication of tender notices in the selected cantons can be summarized as follows:

In the canton Ticino:

- Foglio ufficiale svizzero di commercio, FUSC – Official Swiss Journal of Commerce: **[www.fusc.ch](http://www.fusc.ch)** (all contract notices from the federal government; only individual contract notices from the canton and the communities)

- SIMAP Sistema informativo sulle commesse pubbliche in Svizzera - Information System on Public Procurement in Switzerland: **www.simap.ch** (not all contract notices from the canton and the communities)
- Foglio ufficiale cantonale - Official Cantonal Journal: **http://www.ti.ch/CAN/temi/fu/** (all contracts from the canton and the communities)

In the canton Vaud:

- Feuille Officielle Suisse du Commerce, FOSC – Official Swiss Journal of Commerce: **www.fosc.ch** (all contract notices from the federal government; only individual contract notices from the canton and the communities)
- SIMAP Système d'information sur les marchés publics en Suisse – Information System on Public Procurement in Switzerland: **www.simap.ch** (all contract notices from the canton; only a few contract notices from the communities)
- La Feuille des Avis Officiels du canton de Vaud, FAO – Journal for Official Notices of the Canton Vaud. At this point there is no electronic publication. The paper version can be ordered from: Publicitas Léman S.A., Rue Etraz 4, case postale, 1002 Lausanne, Tel. 021 317 84 84, Fax 021 317 84 99 (all contract notices from the canton and the communities)

In the canton Zürich:

- Schweizer Handelsamtsblatt – SHAB Official Swiss Journal of Commerce: **www.shab.ch** (all contract notices from the federal government; only individual contract notices from the canton and the communities)
- SIMAP – Information System on Public Procurement in Switzerland: **www.simap.ch** (all contract notices from the canton and the communities)
- Kantonales Amtsblatt – Official Journal of the Canton: **www.amtsblatt.zh.ch** (all contract notices from the canton and the communities)

» **Tip:**

Only a certain number of public contracts that are subject to the WTO-Agreement or the agreement between Switzerland and the EU are additionally published in the EU database TED **http://ted.europa.eu**.

» Which procurement procedures are used?

» Above the thresholds

Above the thresholds Swiss procurement procedures are similar to the EU procedures. This includes:

- the open procedure, including a public contract notice; all tenderers can submit a tender.
- the selective procedure, including a public contract notice; all applicants can submit a request to participate.  
The contracting authority decides who may submit a bid.

- the negotiated procedure without public contract notice.

» Below the thresholds

- the open procedure: see above
- the selective procedure: see above
- the invitation / negotiated procedure: no public contract notice are used.

» **Tip:**

You can find more information on these procedures in the decrees of the individual cantons and the Intercantonal Agreement on Public Procurement.

» Which time-limits must be considered?

» Which limits apply above the thresholds?

In Switzerland the following time-limits are generally valid in public procurement procedures:

- open procedure: not less than 40 days (Ticino: 30 days) from the date of publication of the notice until receipt of the tender
- selective procedure: not less than 25 days from the date of publication of the notice until receipt of the requests to participate; subsequently not less than 40 days (Ticino: 30 days) from the invitation to the receipt of the tender

Under special circumstances time-limits can be reduced to 24 days (for notices regarding recurrent contracts).

The award is published in the respective official journal within 72 days and on the SIMAP webpage [www.simap.ch](http://www.simap.ch).

» Which limits apply below the thresholds?

In general the above time-limits also apply to contracts below the thresholds. In Zürich the time-limits are usually not less than 20 days.

» **Tip:**

Please note that the limits in Switzerland differ slightly from the ones in the EU.

» Which evidence can be requested in the course of an application?

The evidence requested within public procurement procedures in Switzerland usually refers to the following:

- financial capacity (liquidity, payment of taxes and social security contributions)
- professional qualification
- adherence to equality regulations for men/women
- and adherence to labour law (safety, working hours, authorization, etc.)

» **Tip:**

The evidence to be submitted is often already stated in the contract notice. Make sure that you know which documents from your country correspond to those requested in Switzerland.

» Who wins? Which award criteria apply?

» Which criteria apply above the thresholds?

As a first step it is determined whether a tenderer is capable of performing the contract. The selection is then based on one award criterion:

the most advantageous tender in terms of its price-performance ratio. These criteria include: price, quality, delivery dates, economic efficiency, cost-in-use, after-sales service, ecological aspects, functionality, technical value, aesthetical aspects, creativity, professional training, and infrastructure.

» Which criteria apply below the thresholds?

The above statement also apply to contracts below the thresholds.

» **Tip:**

Even if it is theoretically possible to participate in public procurement procedures in Switzerland while you have your company seat in your own country, a local representation is advantageous if you want to compete for larger or recurrent public contracts.

## » Where can I file a complaint?

» In the case of contracts above and below the thresholds

Usually the court of appeal (the Administrative Court) and the period for filing a complaint (10 days in the cantons Zürich and Vaud, 15 days in the canton Ticino) are indicated in the contract notice. If the information is insufficient, the contracting authority can be contacted for additional information.

The most important contracting authorities

In the canton Ticino:

- Dipartimento del territorio del cantone ticino <http://www.ti.ch>
- Ente ospedaliero cantonale <http://www.eoc.ch>
- Città di Lugano [www.lugano.ch](http://www.lugano.ch)

In the canton Vaud:

- Centre hospitalier universitaire vaudois [www.chuv.ch](http://www.chuv.ch)
- Ecole polytechnique fédérale de Lausanne: [www.epfl.ch](http://www.epfl.ch)
- Université de Lausanne [www.unil.ch](http://www.unil.ch)
- Transports publics de la région lausannoise [www.t-l.ch/](http://www.t-l.ch/)

In the canton Zürich

- Baudirektion Kanton Zürich [www.bd.zh.ch](http://www.bd.zh.ch)
- Eidg. Technische Hochschule [www.ethz.ch](http://www.ethz.ch)
- Universität Zürich [www.uniz.ch](http://www.uniz.ch)
- Verkehrsbetriebe Zürich [www.vbz.ch](http://www.vbz.ch)

## » Where can I obtain information?

Here are the most important addresses to contact if you have any questions concerning public procurement procedures:

In the canton Ticino:

Ufficio dei lavori sussidiati  
e degli appalti  
Piergiorgio Minoretti  
Via Franscini 17  
CH-6500 Bellinzona  
Tel. ++41 / (0) 91 814 36 80

In the canton Vaud:

Département des infrastructures  
Place de la Riponne 10  
CH-1014 Lausanne  
Tel. ++44 / (0) 21 316 70 07  
Fax ++44 / (0) 21 316 70 34  
E-mail [info.sg-dinf@sg-dinf.vd.ch](mailto:info.sg-dinf@sg-dinf.vd.ch)

In the canton Zürich:

Sekretariat KöB (Kommission für das öffentl. Beschaffungswesen des Kantons Zürich)  
c/o Baudirektion  
Kanton Zürich  
Generalsekretariat-Stab  
Walchetur  
CH-8090 Zürich  
Tel. ++41 / (0) 43 259 28 05  
Fax ++41 / (0) 43 259 51 81  
E-Mail [gs-stab@bd.zh.ch](mailto:gs-stab@bd.zh.ch)  
[www.beschaffungswesen.zh.ch](http://www.beschaffungswesen.zh.ch)

Information on practical aspects regarding public procurement:

[www.simap.ch](http://www.simap.ch), Chapters: Ticino, Vaud, Zürich

## » Checklist for preparing your bid

### » What are the important points to remember?

- Have you read all contract documents very carefully? They contain all the information you need. Remember that even small errors can be the reason for disregarding or excluding your bid.
- Have you requested additional explanations and information from the contracting authority? Make sure
- that this information is provided in writing in case you need evidence.
- Have you followed the instructions in the contract notice when preparing your bid? You are not allowed to change the text of the contract documents or to add any information.
- Have you indicated the company name, the name and the postal address?
- Have you completed the submitted documents and dated and signed each document?
- Have you enclosed all requested documents?
- Have you submitted your bid in a closed envelope and sealed and marked the envelope according to the instructions in the contract documents?
- Have you submitted alternative bids? Check the contract documents to determine whether this was permissible.
- Have you submitted a global bid? Inadmissible partial bids will be excluded.
- Will you transfer services to subcontractors? State in detail which services will be transferred and to what extent this will be the case.
- Have you observed the time-limit for submitting your bid?
- You may make changes/additions to your bid at any time during the time-limit for the receipt of tenders. Remember that these changes may affect the price and that you must indicate any changed prices.
- Have you signed and dated the changes and are the changes you made unambiguous? Any changes on the already completed contract documents must be signed and dated on the margin of the respective page. Revisions of the tender are to be prepared and submitted in the same form (closed envelope, seal ...).

- Have you checked the possible advantages of a cooperation with a local company?

### » **Tender won! What are your next steps?**

Once the tender has been won, the question of performing the services arises. Especially if a contract has to be carried out in another country problems might arise.

The EU single market with its economic freedom (free movement of goods, services and capital as well as free movement of workers) assures that contract services can be performed in each EU member state. Thus there are no difficulties in regard to the performance of supplies. The free movement of goods has been implemented to such an extent that goods can be delivered from one country to another without any problems. The only difference between a domestic and an inner-European sale is the calculation of the value added tax.

There are more difficulties in the field of cross-border services. The freedom of services in the EU single market means that the person providing a service may, in order to do so, temporarily pursue his activity in the State where the service is provided, however, under the same conditions as are imposed by that State on its own nationals. This last clause, called "rule on equal treatment with nationals", results in a few differences between the individual countries, e.g. concerning taxes, social security, professional law, labour law etc.

In addition, there are various restrictions for Czech companies that would like to work in Germany or Austria due to the transition period agreed on during the negotiations on the EU enlargement. These restrictions apply to the performance of services in the construction sector and in other specified sectors as well as to the employment of Czech employees who still need a work permit. Austria and Germany can deploy these restrictions until 2011.

The following problems might arise in general if EU companies carry out services in other EU member states:

#### *VAT in the field of works and services*

It is important to identify in which country the service is subject to VAT and how the invoice has to be composed. The rules on these questions are rather complicated and differ depending on the type of service. Moreover the knowledge of national rules in the country in which the client has its seat or in which the service was carried out. In case of a doubt the advice of the tax authorities should be considered. Euro Info Centres can be contacted as well.

#### *Recognition of professional capacity*

In the field of restricted services, e.g. in the field of handicraft professions or in the field of engineering services, acceptance procedures have to be followed. The question if and which acceptance procedure is necessary has to be answered differently from country to country. In the course of an acceptance procedure companies have to present so called EU certificates from their home countries. In this certificate, chambers of commerce, chambers of handicraft or other professional organisations certify how long, to which extent and with what kind of qualification somebody has carried out a service. Companies participating in public tenders should follow these acceptance procedures already during the tender procedure. The allowance only has to be presented when the service is performed but there might be delays in the acceptance procedure and the award of the contract expires if the allowance cannot be presented on time.

### *Right of residence*

As an EU citizen you have the right to live in another EU country. However, you have to register at the registry office after three months if you are not in the country as a tourist.

### *Social security*

Self-employed, which live in another EU country for less than one year in order to work are still a member of the social security system in their home country. They need the certificate E101. This certificate is binding for the authorities in the country in which they work. Accordingly, they are not allowed to claim social security fees. The following forms have to be requested in the home country:

- E101, which certifies that somebody is still a member of the social security system
- E111 to be able to make use of medical service (e.g. visits at doctors, pharmaceuticals)

If medical institutions are visited without this certificate the treatment has to be paid. The social security from the home country might refund the treatment.

#### **» Tip:**

Your EIC will inform you of the trade and industry regulations that you must observe when performing services in the Alpine regions.