

This document is a non-binding translation but only serves as assistance for tendering. Please consult the relevant call for tender at www.evergabe-online.de for the legal binding documents. DO NOT fill and submit any translated form. Matters of law will ONLY be ruled upon based on German-language documents.

Annex to Request to Participate/Tender "Self-declaration_Grounds for exclusion"

Reference number: _____

Self-declaration on the absence of grounds for exclusion
(Section 48 VgV, Sections 31, 35 UVgO, Section 22 et seqq. VSVgV)

(to be completed and submitted by the candidate/tenderer/other company¹)

Company name:

Address:

The BMI Procurement Office requires you to submit a self-declaration as evidence of the absence of grounds for exclusion. If your place of business is outside the Federal Republic of Germany, your declaration will be based on the laws and regulations of the country in which you are established. Your undertaking may be excluded from participation in the competition in accordance with Section 124(1) no 8 of the Act against Restraints of Competition (GWB), if

you are guilty of fraudulent misrepresentation when supplying information regarding the criteria of exclusion or suitability criteria or of holding back information or of being incapable of supplying the required evidence.

1. Prequalification (if applicable)

IHK (CCI) certificate number _____ (https://amtliches-verzeichnis.ihk.de/)

Access code _____ (https://amtliches-verzeichnis.ihk.de/)

2. Declaration under Section 123 GWB related to final judgements or a final regulatory fine under Section 30 of the German Administrative Offences Act (OWiG) in the last 5 years (the relevant date is the time at which the judgement or fine becomes final)

I declare that I/we have read and understood Section 123 GWB (Annex 1) and that under Section 123 GWB,

¹In the context of reliance on other undertakings' resources or subcontracting, each other company and each member of a candidate or tendering consortium must complete and submit its own declaration.

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no grounds for exclusion apply to me/us. grounds for exclusion apply to me/us.

Should one or more grounds for exclusion apply to you, please explain the immediate circumstances and describe whether, and if so, which self-cleaning measures you have taken within the meaning of Section 125(1) GWB.

Please note down your explanations on a separate sheet to be attached to this declaration.

3. Declaration under Section 124(1) no 2 GWB

Facultative ground for exclusion under Section 124(1) no 2 GWB		
Does one or do more of the following facultative grounds for exclusion under Section 124(1) no 2 GWB apply to you? Please tick as appropriate.	No	Yes
My/our undertaking is insolvent.	<input type="checkbox"/>	<input type="checkbox"/>
An insolvency proceeding or a comparable proceeding has been filed.	<input type="checkbox"/>	<input type="checkbox"/>
An insolvency proceeding or a comparable proceeding has been opened.	<input type="checkbox"/>	<input type="checkbox"/>
The opening of an insolvency proceeding or a comparable proceeding has been denied for lack of assets.	<input type="checkbox"/>	<input type="checkbox"/>
The insolvency plan, which I will submit on request, has been declared to be final.	<input type="checkbox"/>	<input type="checkbox"/>
My/Our undertaking is in liquidation proceedings.	<input type="checkbox"/>	<input type="checkbox"/>
My/Our undertaking has ceased to do business.	<input type="checkbox"/>	<input type="checkbox"/>

Should you have given one or more affirmative answers, which means that one or more grounds of exclusion apply to you, please explain the immediate circumstances and describe why you are still capable to perform the contract. Please note down your explanations on a separate sheet to be attached to this declaration.

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4. Declaration under Section 124(1) nos 1, 3 to 7 and Section 124(2) GWB

Facultative grounds for exclusion under Section 124(1) nos 1, 3 to 7 and Section 124(2) GWB		
Does one or do more of the following facultative grounds for exclusion according to Section 124(1), nos 1, 3 to 7 and Section 124(2) GWB apply to you? Please tick as appropriate.	No	Yes
Have you breached applicable environmental, social or labour obligations in carrying out public contracts?	<input type="checkbox"/>	<input type="checkbox"/>
Have you or has a person whose conduct is imputable to the undertaking <ul style="list-style-type: none"> – iaw Section 21(2), first or second sentence, of the Act to Combat Undeclared Work and Unlawful Employment, – iaw Section 21 of the Posted Workers Act, – iaw Section 98c of the Residence Act, – iaw Section 19 of the Minimum Wage Act been sentenced to a term of imprisonment exceeding 3 months or a fine exceeding 90 daily rates or an administrative penalty exceeding EUR 2,500 in the last two years? The conduct of a person shall be imputable to an undertaking if that person has acted as the person responsible for the management of the undertaking; this also includes supervision of management or the exercise of control in another manner in a managerial position.	<input type="checkbox"/>	<input type="checkbox"/>
Has your undertaking or a person whose conduct is imputable to the undertaking demonstrably committed grave professional misconduct which renders the undertaking's integrity questionable? The conduct of a person shall be imputable to an undertaking if that person has acted as the person responsible for the management of the undertaking; this also includes supervision of management or the exercise of control in another manner in a managerial position. Grave professional misconduct may include, for example, non-compliance with collective wage agreements, violation of rules of competition or of intellectual property rights.	<input type="checkbox"/>	<input type="checkbox"/>
Has your undertaking concluded agreements with another undertaking or engaged in concerted practices which have as their object or effect, the prevention, restriction or distortion of competition?	<input type="checkbox"/>	<input type="checkbox"/>

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Has your undertaking been involved in the preparation of the procurement procedure?	<input type="checkbox"/>	<input type="checkbox"/>
Has your undertaking produced significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract or concession contract which led to an early termination, damages or other comparable sanctions?	<input type="checkbox"/>	<input type="checkbox"/>

Should you have given one or more affirmative answers, please explain the immediate circumstances and describe whether, and if so, which self-cleaning measures you have taken within the meaning of Section 125(1) GWB.

Please note down your explanations on a separate sheet to be attached to this declaration.

Note (cf. Section 126 GWB):

Where an undertaking for which a ground for exclusion exists has taken no or insufficient self-cleaning measures under Section 125 GWB, it may in accordance with Section 126 GWB,

1. if a ground for exclusion exists under Section 123, be excluded from participation in procurement procedures for up to five years from the day of the final conviction,
2. if a ground for exclusion exists under Section 124, be excluded from participation in procurement procedures for up to three years following the event at issue.

Place, date **First name and surname of the person making the declaration**

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Annex 1

Section 123 GWB Compulsory Grounds for Exclusion

- (1) Public contracting authorities shall exclude an undertaking from participation at any point in the procurement procedure when they are aware that a person whose conduct is imputable to the undertaking in accordance with subsection (3) has been convicted by final judgement or a final administrative fine has been issued against the undertaking under Section 30 of the German Administrative Offences Act for a criminal offence under:
1. Section 129 of the German Criminal Code [Strafgesetzbuch] (forming criminal organisations), Section 129a of the German Criminal Code (forming terrorist organisations) or Section 129b of the German Criminal Code (foreign criminal and terrorist organisations),
 2. Section 89c of the German Criminal Code (financing of terrorism) or for participation in such a crime or for the provision or collection of financial resources with the knowledge that such financial resources will be used or are intended to be used, wholly or in part, to commit a crime under Section 89a(2) no 2 of the German Criminal Code,
 3. Section 261 of the German Criminal Code (money laundering; concealing unlawfully acquired assets),
 4. Section 263 of the German Criminal Code (fraud), provided that the criminal offence is directed against the budget of the European Union or against budgets administered by the European Union or on its behalf.
 5. Section 264 of the German Criminal Code (subsidy fraud), provided that the criminal offence is directed against the budget of the European Union or against budgets administered by the European Union or on its behalf,
 6. Section 299 of the German Criminal Code (taking and giving bribes in commercial practice), Sections 299a and 299b of the German Criminal Code (taking and giving bribes in the health sector),
 7. Section 108e of the German Criminal Code (taking of bribes by and giving of bribes to elected officials),

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8. Sections 333 and 334 of the German Criminal Code (granting benefits and giving bribes), each also in conjunction with Section 335a of the German Criminal Code (foreign and international officials),
 9. Article 2 Section 2 of the German Act on Combating International Bribery [Gesetz zur Bekämpfung internationaler Bestechung] (Bribery of Foreign Public Officials in International Business Transactions) or
 10. Sections 232, 232a (1) to (5), Sections 232b to 233a of the German Criminal Code (human trafficking, forced prostitution, forced labour, exploitation of labour, exploitation involving deprivation of liberty).
- (2) A conviction or the issuance of an administrative fine under the comparable provisions of other countries are the equivalent of a conviction or the issuance of an administrative fine within the meaning of subsection (1).
- (3) The conduct of a person convicted by final judgement shall be imputable to an undertaking if that person has acted as the person responsible for the management of the undertaking; this also includes supervision of management or the exercise of control in another manner in a managerial position.
- (4) Public contracting authorities shall at any point in the procurement procedure exclude an undertaking from participating in the procurement procedure if
1. the undertaking has not fulfilled its obligations relating to the payment of taxes, charges or social security contributions and this has been established by a judicial or administrative decision having final and binding effect or
 2. the public contracting authorities can prove the breach of an obligation under no 1 in another suitable manner.
- Sentence 1 shall not apply if the undertaking has fulfilled its obligations by making the payment or committing to pay the taxes, charges and social security contributions, including interest, fines for late payment and penalties.
- (5) An exclusion under subsection (1) may be disregarded if this is imperative for compelling reasons of public interest. An exclusion under subsection (4) sentence 1 may be disregarded if this is imperative for compelling reasons of public interest or if an exclusion would be obviously disproportionate. Section 125 shall remain unaffected.