

Country case: Specialised public procurement tribunals in Germany

Description

The review system in Germany applies to public procurement procedures covered by the EU public procurement directives. Complaints related to public procurement up until the award of the contract are, in the first instance, heard by specialised administrative procurement tribunals (Vergabekammern). At state (regional) level (Länder), there are regional procurement tribunals competent for procurement procedures under the responsibility of the Länder. At the federal level, there is a procurement tribunal with two chambers (due to workload) within the German competition authority, the Federal Cartel Office (Bundeskartellamt). All procurement tribunals are established in accordance with Part IV (“Award of Public Tenders”) of the Act against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen).

Public Procurement
Principle: **Accountability**

Procurement Stage:

All phases

Audience: **Policy Maker,
Procuring Entity, Private
Sector**

There are three members of the chambers of the federal procurement tribunal. Two members (the Chair of the chamber and one member) are civil servants, appointed by the President of the Bundeskartellamt, following a job opening and an interview, for five years; this period can be renewed several times. The Chair must be qualified to be a judge, and usually the member has also a legal background. The third member is proposed by associations of suppliers and is a person experienced in public procurement, usually not a lawyer but an expert in technical issues. The organisational structure of the procurement tribunals is similar to that of a court of law.

Litigants pay fees to cover the costs and expenses of the tribunals. Fees are at least EUR 2,500 and do not exceed EUR 50,000. Fees up to EUR 100,000 can be asked in cases where the commercial relevance, or the effort of the tribunal, is exceptionally high. The public procurement tribunal usually asks for a down payment of EUR 2,500 in order to proceed with the case. The winning party of the case may be awarded legal costs by the losing party.

The tribunal is not bound by the applications. If it finds that the case has merit, it may order suitable measures to remedy a situation and prevent further harm and can also request to suspend the procurement procedure.

The procedure before the tribunal is technical, facts-based, but with procedural safeguards to ensure the rights of due process. Decisions are rendered within five weeks; an additional two weeks may be allowed in exceptional cases. Decisions of all procurement tribunals are binding. They can be appealed before the competent courts of appeal (Oberlandesgerichte); court proceedings can last six months or longer.



Source: OECD (2016), [Towards Efficient Public Procurement in Colombia: Making the Difference](#), OECD Publishing, Paris.

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