



Self-declaration
- Absence of grounds for exclusion -
(Section 48 VgV¹, Sections 31, 35 UVgO², Sections 22 ff. VSVgV³)

The self-declaration must be completed by each tenderer and/or member of a bidding consortium and associated subcontractors, unless they are prequalified.

Tenderer/Applicant or member of a bidding consortium or subcontractor

Name	
Address	

I. Compulsory grounds for exclusion

Section 123 GWB (Competition Act)

(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 [Gesetz über Ordnungswidrigkeiten] 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; concealment of unlawfully obtained 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);
 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 is 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.

¹ VgV = Ordinance on the Award of Public Contracts – Public Procurement Ordinance

² UVgO = Sub-threshold procurement regulations

³ VSVgV = Defence and Security Procurement Ordinance

(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.

I/We declare that none of the above-mentioned compulsory grounds for exclusion in accordance with **Section 123 GWB** (Competition Act) exist for my/our company:

☐ yes

☐ no

Please note: Proof of self-cleaning pursuant to Section 125 GWB (Competition Act) is required (see Section III.)

II. Facultative grounds for exclusion

Section 124 GWB (Competition Act)

(1) Taking the principle of proportionality into account, public contracting authorities may at any point in the procurement procedure exclude an undertaking from participating in the procurement procedure if

1. the undertaking has demonstrably breached applicable environmental, social or labour obligations in carrying out public contracts;

2. the undertaking is insolvent, an insolvency proceeding or a comparable proceeding over the assets of the undertaking has been filed or opened, the opening of such a proceeding has been denied for lack of assets, the undertaking is in liquidation proceedings or has ceased to do business;

3. the undertaking has demonstrably committed grave professional misconduct which renders its integrity questionable; Section 123(3) shall apply mutatis mutandis;

4. the public contracting authority has sufficient indications that the undertaking has concluded agreements with other undertakings or engaged in concerted practices which have as their object or effect, the prevention, restriction or distortion of competition;

5. a conflict of interest exists in the execution of the procurement procedure which could compromise the impartiality and independence of a person working for the public contracting authority in the executing of the procurement procedure and which cannot be effectively remedied by other, less intrusive measures;

6. a distortion of competition results from the prior involvement of the undertaking in the preparation of the procurement procedure, and such distortion of competition cannot be remedied by other, less intrusive measures;

7. the undertaking has 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;

8. the undertaking has committed a serious misrepresentation or withheld information or is not able to submit the required evidence with respect to the grounds for exclusion or the selection criteria; or

9. the undertaking

a) has attempted to unduly influence the decision-making process of the public contracting authority;

b) has attempted to obtain confidential information that may confer upon it undue advantages in the procurement procedure; or

c) has negligently or intentionally provided misleading information that may have a material influence on the decision of the public contracting authority concerning the award decision, or has attempted to provide such information.

(2) Section 21 of the Posted Workers Act [Arbeitnehmer-Entsendegesetz], Section 98c of the Residence Act [Aufenthaltsgesetz], Section 19 of the Minimum Wage Act [Mindestlohngesetz], Section 21 of the Act to Combat Undeclared Work and Unlawful Employment [Schwarzarbeitsbekämpfungsgesetz] and Section 22 of the Act on Corporate Due Diligence Obligations in Supply Chains [Lieferkettensorgfaltspflichtengesetz], dated July 16, 2021 [Federal Law Gazette I, page 2959] shall remain unaffected.

I / We declare that none of the above-mentioned compulsory grounds for exclusion in accordance with **Section 124 GWB (Competition Act)** exist for my / our company:

- ☐ yes
- ☐ no

Please note: Proof of self-cleaning pursuant to Section 125 GWB (Competition Act) is required (see Section III.)

III. Self-cleaning
Section 125 GWB (Competition Act) <i>(1) Public contracting authorities shall not exclude an undertaking for which a ground for exclusion exists under Section 123 or Section 124 from participation in the procurement procedure where the undertaking has proven that it</i> 1. <i>has paid or undertaken to pay compensation for any damage caused by the criminal offence or misconduct;</i> 2. <i>has comprehensively clarified the facts and circumstances associated with the criminal offence or misconduct and the damage caused thereby by actively collaborating with the investigating authorities and the public contracting authority; and</i> 3. <i>has taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.</i> <i>Section 123(4) sentence 2 shall remain unaffected.</i> <i>(2) Public contracting authorities shall evaluate the self-cleaning measures taken by the undertaking, taking into account the gravity and the particular circumstances of the criminal offence or misconduct. If the public contracting authorities consider the self-cleaning measures by the undertaking to be insufficient, they shall provide the undertaking with justification for the decision.</i>

I/We provide the following evidence of self-cleaning in accordance with **Section 125 GWB (Competition Act)**:

Elements of offence according to GWB (Competition Act)	Proof of self-cleaning pursuant to Section 125 GWB (Competition Act)

(Further entries and explanations on a separate sheet if necessary)

IV. Subcontractor

I commit/we commit
to request the above declaration of eligibility also from subcontractors and to present it to the client on request.

Place, date

Company stamp, signature

Name in block capitals

Note: In the case of signatures in text form in accordance with Section 126 b of the German Civil Code (BGB), a legible declaration in which the undertaking and the person acting are named is necessary and sufficient.