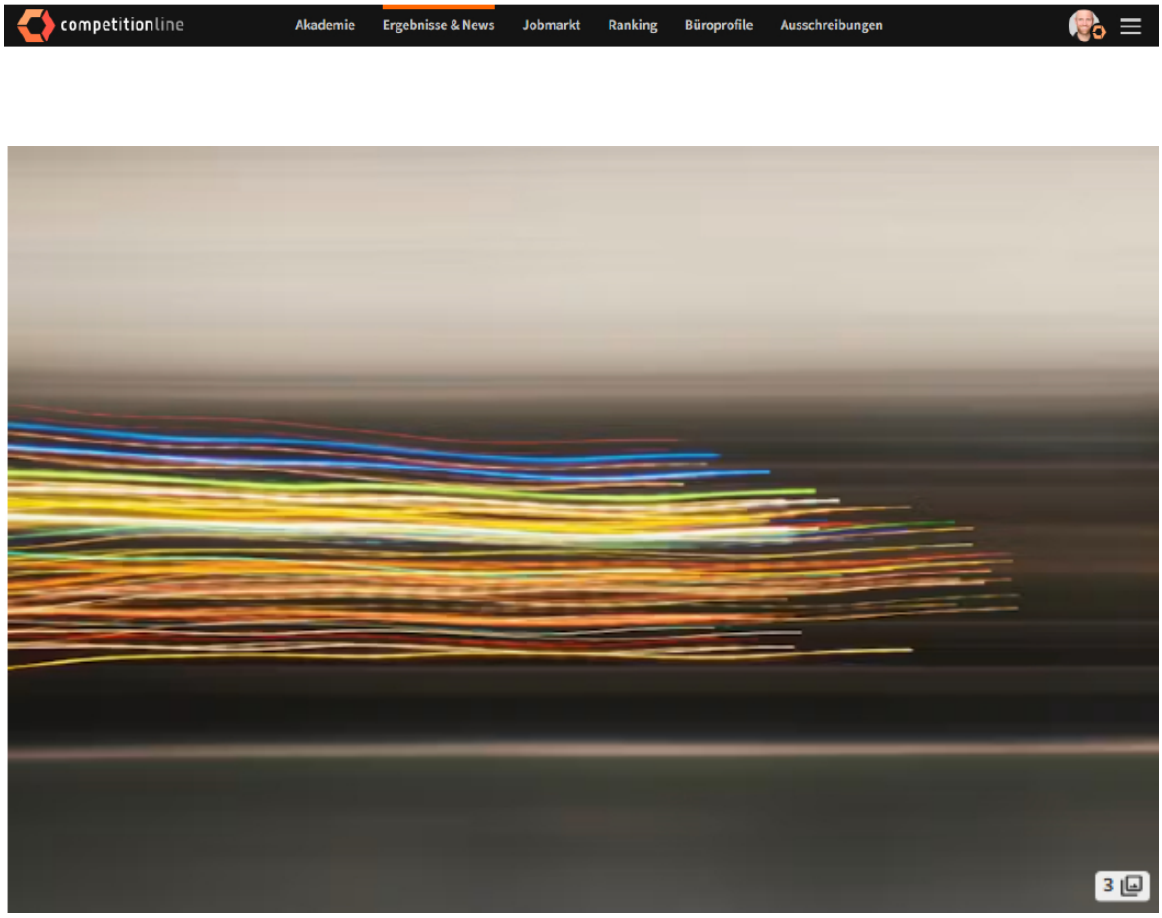


**Can’t we speed things up a bit? This July, the German Act to Accelerate the Awarding of Public Contracts (*Gesetz zur Beschleunigung der Vergabe öffentlicher Aufträge*) comes into force.**



BUSINESS OPPORTUNITIES 01/06/2026

# What does the German Public Procurement Acceleration Act mean for planning and design consultancies?

**The German Public Procurement Acceleration Act aims to streamline public procurement and get investment projects off the ground more quickly. Public procurement law experts Salomo Ortega Sawal and Carsten Bringmann from law firm Noerr look at what will change for those involved in project planning – from exemptions**

**from the principle of partial or trade-specific lots to the consideration of small and newly established firms.**

Text: Benedikt Crone

*On 1 July 2026, the German Public Procurement Acceleration Act (Vergabebeschleunigungsgesetz) will come into force. This brings to an end a political debate that has been ongoing for several years, having originated from an initiative by the three-party coalition government. Apart from speeding up procurement processes, policymakers are hoping to save costs: the aim is to reduce the burden on public authorities and businesses by 380 million euros a year. We spoke to lawyers and public procurement experts* ***Salomo Ortega Sawal*** *and* ***Carsten Bringmann*** *about the impact the statute will have on the work of planning and design consultancies.*

**What do you regard as being the key changes for planning and design consultancies resulting from the new Act?**

Three points are especially relevant for planning and design firms. The first is the expanded scope for deviating from the principle of awarding contracts in separate lots. This is intended to protect small and medium-sized enterprises – contracts are to be divided up in such a way that SMEs can bid for individual trade-specific lots or sub-lots. Secondly, there will be relaxed requirements for young companies and start-ups, for example regarding proof of suitability, documentation, and terms of payment and invoicing. And thirdly, there will be a marked reduction in legal protection.

**Chambers of architects and engineers have expressed relief that the principle of dividing contracts into separate lots is to be retained. At the same time, there are new exceptions. Is this now more a case of watering down the rules or sticking to them?**

The principle remains in place. A conscious decision has been made to retain the practice of awarding contracts by lots. This means that contracts are essentially still to be divided into trade-specific or partial lots. However, the range of exceptions has been expanded. Multiple lots can be awarded together if this is required for economic or technical reasons. Section 97a of the German Act against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen*) also contains further exceptions. This mainly applies to certain infrastructure projects financed from the Special Fund for Infrastructure and Climate Neutrality or relating to transport infrastructure. This is relevant for planning and design consultancies because these areas are closely linked to construction and planning.

Besides this, when awarding a single contract, contracting authorities will be able to require contractors to give special consideration to the interests of small or medium-sized enterprises when delegating subcontracts. The earlier draft of the Public Procurement

Transformation Act (*Vergabetransformationsgesetz*) by the government coalition provided for significantly more far-reaching exceptions. These additional relaxations were not adopted. From this perspective, the current Act can certainly be understood as a commitment to the principle of division into lots. Although the exceptions are being broadened, the maxim remains in place.

*Salomo Ortega Sawal is a German-qualified lawyer and senior associate based in Noerr's Dusseldorf office.*



**Does the Act have a different impact on day-to-day business development in small and large consultancies?**

The rules initially apply to everyone. Small firms could benefit from the direct contract threshold if they frequently provide services for relatively low fees. At the same time, large firms usually have more resources to be able to analyse new legal rules and adapt their strategies to reflect them. This isn't specific to this law, but applies generally to the public procurement market. This makes it important for small consultancies to familiarise themselves with the changes – not because they are at a disadvantage, but because they need to know where new opportunities will arise.

A new provision is section 42(2) of the German Public Procurement Regulation (*Vergabeverordnung*). It states that the interests of small, medium-sized and young enterprises must be given due consideration when selecting suitability criteria and defining the required proof. This mainly applies to project testimonials and minimum annual turnover. The requirements shouldn't be set in such a way that smaller or younger enterprises are

disadvantaged from the start. These provisions have also been expressly incorporated into the revised version of section 75(4) of the above Regulation for awards of architectural and engineering services, as the legislature found that not enough smaller firms and early-career professionals were participating under the previous rules and wants to promote this.

**What specific framework does the Act provide?**

Contracting authorities will still have wide room for discretion. It isn't possible to legally oblige them to only require a certain maximum number of testimonials or to lower certain turnover requirements. The point is that they'll have to consider the implications of their requirements. It remains to be seen how contracting authorities will implement this provision in practice. However, from our perspective this is a positive step because contracting authorities are explicitly urged to take small and young companies into account.

## Where the Act applies to the awarding of contracts for planning and design services

- **Principle of separate lots remains in place but will become more flexible:** while trade-specific and partial lots will remain the norm, more exceptions for single contracts (for example in certain infrastructure projects) are being introduced.
- **Subcontracts may become more important**: where single contracts are involved, main contractors will have to give due consideration to small and medium-sized enterprises when awarding subcontracts.
- **More direct contracts:** by raising the threshold for direct contracts from €1,000 to €50,000, it will be possible to award smaller planning services more frequently without a formal tendering procedure in future. Bearing this in mind, consultancies should maintain good relations with public contracting authorities.
- **Starting position for small and new firms set to improve:** contracting authorities should take greater account of the interests of small, medium-sized and young enterprises when it comes to suitability criteria such as testimonials and minimum turnover. However, since there are no specific guidelines, firms should continue to scrutinise tenders for excessive requirements.
- **Less supporting documentation thanks to the best-bidder principle:** as a rule, extensive supporting documentation only has to be submitted by the firm to which the contract is to be awarded. What is already common practice in many places is now becoming mandatory.

- **Warning – legal protection to be curtailed:** after a firm loses before the public procurement review board, an appeal will no longer automatically have a suspensive effect, meaning that authorities will be able to award contracts more quickly. The only recourse left to firms bringing legal action will then be the slim hope of compensation. This makes it important to review objections and requests for review even more carefully and at an earlier stage.

**You also mentioned another requirement designed to benefit small and medium-sized firms: if a main contractor is awarded a contract, they should give due consideration to small and medium-sized enterprises when awarding subcontracts. What does "due consideration" mean?**

Contracting authorities and main contractors are free to decide for themselves how to implement this requirement in practice. However, the explanatory memorandum to the Act states that the authority should set out obligations as precisely and specifically as possible – for reasons of legal clarity, legal certainty and enforceability. This can be set down in the contract or even in the tender documents. However, no specific method is prescribed and the authority isn't required to document this in the tender files. There's a high proportion of small and medium-sized enterprises in the sector, especially in the field of planning services. Contracting authorities have a vested interest in competition and getting the best value for money. This will lead them to generally keep an eye on SMEs in this sector.

**The threshold for direct contracts is rising from €1,000 to €50,000. This could result in direct contracts becoming genuinely relevant for planning and design consultancies in connection with smaller contracts for the first time. Is there a risk that this will speed up the process at the expense of competition?**

It's true that the previous threshold was so low that there were practically no situations where it applied to planning and design firms. However, we don't see any risk of contracts being awarded under the table in this way. Although no formal tendering procedure takes place below this threshold, budgetary law still applies. The federal government, regional states and local authorities are bound by the principles of economy and efficiency.

An authority can't simply ring up someone they like and give them the contract. They have to at least get a sense of the market. It's customary to obtain two or three comparative quotes. This doesn't have to follow a strictly formal procedure, but serves as evidence that the quote selected is cost-effective. Besides this, the Act stipulates that contracting authorities should rotate between the companies they commission. This is intended to prevent the same companies always being selected.

**Some local authorities harbour the preconception that planning and design competitions conflict with the principle of accelerated procurement. Do you foresee any specific consequences of the Act that could lead to the already low number of competitors declining even more?**

No. Section 78 of the Public Procurement Regulation, which is the key provision governing planning competitions, remains in place. The evaluation criteria also remain unchanged: planning and design competitions are described as an instrument that promotes innovation and quality, notably for architectural and engineering services. It is possible that authorities will rely more heavily on single-stage procedures or opt for competitions leading to actual implementation rather than ideas competitions. But in principle, planning and design competitions remain unaffected.

Salomo Ortega Sawal and Carsten Bringmann advise both the public sector and private businesses on all aspects of public law, with a focus on public procurement law. Please feel free to contact them for further advice:

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**At the start of our conversation, you mentioned a marked reduction in legal protection. That sounds serious. What exactly is to change?**

Up to now, after an application for review was made, the authority was prohibited from awarding the contract as long as the procedure was still running before the public procurement review board until the end of the appeal period. This means that if a bidder or applicant loses, they can file an immediate appeal, which then triggers a suspensive effect. This is due to change: if an applicant loses at first instance, their appeal will no longer have a suspensive effect. The contractor can award the contract despite the appeal being ongoing. In effect, bidders will only have one attempt before the review board in the future. [Editorial comment: *The Federal Constitutional Court is currently looking at the rule under the predecessor statute of the Public Procurement Acceleration Act, the German Armed Forces Procurement Acceleration Act (Bundeswehrbeschaffungsbeschleunigungsgesetz). A decision is not anticipated before 2027.**]

This is problematic for companies because damages are only secondary legal protection. You have to be able to prove that you would have actually won the contract. This is especially difficult at an early stage of the procedure. Newly established consultancies are also faced by the problem that damages don't replace a testimonial or experience from actually carrying out the work.

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**Is this change to legal protection politically justified because it speeds up procurement processes?**

From our point of view, no. Of course, procurement processes have to run quickly. But this is already covered by the principle of urgency. Proceedings before the higher regional court mostly don't go on for years and are often completed within a year.

Furthermore, if a contractor awards a contract to a company which it shouldn't have granted and then potentially has to deal with damages proceedings, this isn't exactly economical use of budgetary resources. It may not have obtained the most economical bid, either.

Another point is that only very few review procedures are challenged and actually reach the appeal stage. We're talking a tiny fraction of all tenders, or around 100 appeal proceedings a year – throughout Germany and in all public procurement sectors. But where it becomes relevant, it means that legal protection is substantially reduced. In our view, the possibilities of speeding up the process lie primarily not in review proceedings, but already in the tender process and in efficient planning prior to the tender, i.e. with the authorities.

**Another new development is the nationwide introduction of the best-bidder principle, which is already common practice in many places. What's behind this principle?**

That really does make things easier. In the end, the documentary evidence has to be available to the bidder who is to receive the contract. The parties who don't win the tender don't have to put all the documents together at an early stage and can initially work with self-declarations. This means that this time-consuming task is postponed for the successful bidder. For all other bidders, there will actually be less red tape. Despite this, it is still advisable to use existing prequalification systems or the European single procurement document.

**What will happen with sub-threshold contracts?**

We already discussed the most important change: the amendment for direct contracts in section 55(2) of the German Federal Budget Regulation (*Bundeshaushaltsordnung*). The Public Procurement Acceleration Act otherwise almost exclusively relates to the above-threshold sector. However, parallel to this, the German Sub-Threshold Procurement Regulation (*Unterschwellenvergabeordnung*) is also to be revised by 31 December 2026. This is intended to simplify other aspects and create alternative solutions. The Regulation applies in all German states apart from Saxony.

**Finally, how do you rate the consequences of the Public Procurement Acceleration Act for planning and design consultancies overall?**

Neutral to positive, especially in the light of the principle of separate lots being maintained, the introduction of the best-bidder principle and the increased limit for direct contracts. However, the reduction in effective primary legal protection is critical. This greatly reduces protection for bidders and at the same time exposes authorities to a significant risk of having to pay damages where large-scale projects are involved – at the expense of efficient public spending.

*Editorial note: *The Federal Constitutional Court is currently reviewing the Armed Forces Procurement Acceleration Act (section 16(1) of the Act) after the procurement division at Dusseldorf Higher Regional Court (OLG Düsseldorf) referred the provision to the court for a review of its constitutionality. This could lead to the general discontinuation of the suspensive effect planned for 1 July 2026 when immediate appeals are filed being halted by the legislature for the time being and revised. A decision by the Constitutional Court is not likely until next year.*