

TUB transaction number OV-252-26
Description of requirement Procurement of an optical measurement system for volumetric, time-resolved fluid and structural measurements in water

**Special Contract Conditions Regarding Inspections and Sanctions Under the
Berlin Tender and Procurement Act (*Berliner Ausschreibungs- und
Vergabegesetz – BerlAVG*)
Section B of the Special Contract Conditions Regarding**

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|-------------------------------------|---|--------------|
| ☒ | Minimum Hourly Rates of Pay and Observation of Collective Wage Agreements | (Wirt-214.1) |
| ☐ | Observation of Collective Wage Agreements from EUR 1,000 | (Wirt-214.2) |
| ☐ | Compliance With ILO Core Labor Standards | (Wirt-2140) |
| ☐ | The Advancement of Women | (Wirt-2141) |
| ☒ | The Prevention of Disadvantages | (Wirt-2143) |
| ☐ | Environmental Protection Requirements | (Wirt-2145) |

I. Transfer of these Special Contract Conditions throughout the subcontractor chain

The contractor undertakes to transfer the obligations required by Part B of the Special Contract Conditions to all subcontractors and/or agencies providing staff. These, in turn, are required to conclude a corresponding agreement with any subcontractors and/or agencies providing staff.¹

¹ *Vergabeservice Berlin* provides a German-language template for this purpose:

<https://www.berlin.de/vergabeservice/vergabeleitfaden/hinweise-fuer-bieter/artikel.1259454.php>.

Please note that when awarding subcontracts, the obligation to comply with collective wage agreements must be transferred to the subcontractor for subcontracts with a value of EUR 1,000 or more (excluding VAT). The specifics and the corresponding components of the contract can be found in the template.

II. Inspections and sanctions**1. Inspections****1.1. Scope of inspections**

The contracting authority and the contractor agree that compliance with the following contract conditions, insofar as they have been agreed, may be inspected by the public contracting authority or the central inspection body of the State of Berlin:

- 1.1.1. Payment of remuneration to employees deployed for the performance of the contract according to those remuneration regulations, including minimum remuneration, as made binding for the service in question under the Minimum Wages Act (*Mindestlohngesetz*), a collective agreement declared generally binding under the Collective Agreements Act (*Tarifvertragsgesetz*) with the effects provided for by the Posted Workers Act (*Arbeitnehmer-Entsendegesetz*), or a statutory ordinance issued on the basis of Section 7, Section 7a, or Section 11 of the Posted Workers Act, or a statutory ordinance issued on the basis of Section 3a of the Act on Temporary Agency Work (*Arbeitnehmerüberlassungsgesetz*) (see Wirt-214.1, No. 1.1.1.);
- 1.1.2. Payment of remuneration to employees deployed for the performance of the contract in accordance with the regulations of the collective wage agreement which applies to the respective trade or profession in the State of Berlin (see Wirt-214.1, No 1.1.2.; Wirt-214.2, No 1.1.);
- 1.1.3. Payment of a minimum hourly rate to employees deployed for the performance of the contract (excluding trainees) at the agreed rate of pay (see Wirt-214.1, No. 1.1.3.);
- 1.1.4. Compliance with ILO core labor standards as per the obligations assumed in the tender specifications and the Annex to the Tender Specifications Regarding Proof of ILO Compliance (see Wirt-2140);
- 1.1.5. Measures for the advancement of women and/or the advancement of the compatibility of family and work (see Wirt-2141);
- 1.1.6. Environmental protection regulations (criteria for goods and services/terms of execution) (see Wirt-2145);

- 1.1.7. Transfer of the assumed obligations to subcontractors and/or agencies providing employees and throughout the subcontracting chain (Wirt-214.1, No 2. and Wirt-214.2, No 2. regarding payment of specific minimum hourly rates of pay and certain collectively agreed wages; Wirt-2141, III.2. regarding measures for the advancement of women; Wirt-2145, No 3. regarding environmental requirements under the terms of execution; Wirt-2144, I., regarding transfer of the obligations listed in this document to subcontractors and/or agencies providing staff and throughout the subcontracting chain.)

1.2. Inspection process

- 1.2.1. The contracting authority or the central inspection body of the State of Berlin inspects compliance with the contract conditions listed under II.1.1. by requesting the requisite documents for inspection or by inspecting the documents that are to be kept ready for inspections in the contractor's or subcontractor's premises and/or those of the agency providing employees.
- 1.2.2. The contractor or subcontractor and/or agency providing employees is obligated to cooperate in this process by presenting the documents required in full and in an inspectable condition for the purposes of ascertaining if the agreed contract conditions listed under II.1.1 are complied with.
- 1.2.3. Inspections are conducted with the cooperation of the contractor or subcontractor and/or the agency providing employees. The contracting authority or the central inspection body shall provide reasonable periods of notice regarding the submission or provision of the necessary documents, taking account of the work involved for the contractor or subcontractor. The period of notice for the submission or provision of the documents shall not be less than 21 calendar days

1.3. Documents required for inspection

The complete and inspectable documentation required for inspecting compliance with:

- 1.3.1. Payment of the statutory minimum wage or the minimum hourly wage under public procurement law:
- Employment contracts;
 - Payroll slips;
 - Time sheets.

1.3.2. Remuneration in accordance with a binding collective wage agreement in addition to the documents required under II.1.3.1.:

- Documents proving salary scale/remuneration group;
- Relevant collective agreements.

1.3.3. Further compliance of the entire subcontracting chain:

- Contractual obligation of the subcontractor or agency providing staff and its entire subcontracting chain regarding the obligations to be inspected;
- If applicable, subcontractor agreements, order forms, or invoices.

1.3.4. ILO core labor standards:

- Quality seals or equivalent proof (as per the Annex to the Tender Specifications Regarding Proof of ILO Compliance);
- Qualified certificates of origin (as per the Annex to the Tender Specifications Regarding Proof of ILO Compliance);
- If applicable, other documents required for a conclusive inspection, such as delivery notes, documents showing quantities delivered, invoices, production quantities.

1.3.5. Measures for the advancement of women and/or the advancement of the compatibility of family and work:

- Documents providing proof of each of the respective specific measures for the advancement of women and/or the advancement of the compatibility of family and work;
- Employment contracts;
- If applicable, proof of the number of employees employed at the company.

1.3.6. Environmental protection regulations:

- Certificates/quality seals;
- Delivery notes or other agreed equivalent proof;
- If applicable, other documents for conclusive inspection, such as contracts concluded between the executing companies, documents on delivery quantities, confirmations of services, etc.

In addition to the documents mentioned in points II.1.3.1. to II.1.3.6., further documents may be required for conclusive inspection, depending on the individual case.

1.4. Protection of personal data and business secrets

During the inspection and documentation process, any possible business secrets are protected. Similarly, personal data will only be processed for the purposes of inspection and will only be made available to the staff of the public contracting authority or the central inspection body directly responsible for the inspection. The principles of data economy and data security shall be observed throughout.

1.5. Cooperation in the inspection of the contractor or subcontractor and/or agency providing employees; transfer of this obligation to the subcontracting chain

The contractor or subcontractor and/or agency is obliged to cooperate throughout the inspection (see also II.1.2). In addition to the preparation and submission of the documents referred to in II.1.3, this also requires the contractor or subcontractor and/or agency to comply with all data protection requirements for the processing of personal data of employees deployed for the performance of the contract, in particular by informing such employees regarding possible inspections and explaining what these entail. The contractor is further obliged to transfer this obligation to all subcontractors working on the contract throughout the entire subcontracting chain for the purposes of assisting the contracting authority and the central inspection body in their work. The contractor undertakes to pay all costs that arise on their part as a result of the inspection.

2. Sanctions

2.1. Scope of sanctions

The contracting authority and contractor agree that the contracting authority may impose sanctions on the contractor in the case of a culpable infringement by the latter of the contract conditions referred to in II.1.1.1. to II.1.1.7., assuming these have been agreed.

This also applies to an infringement of the Special Contract Conditions Regarding the Prevention of Disadvantages (Wirt-2143) as well as any infringement of the obligation to cooperate in the inspection process under II.1.2. Possible sanctions include penalties for breach of contract, termination of the contract or withdrawal from the contract, as well as compensation or a price reduction in accordance with the following provisions.

2.2. Contractual penalty

- 2.2.1. The contracting authority and contractor agree a contractual penalty for breach of contract of 1 percent of the remuneration payable to the contractor (excluding VAT) for each culpable infringement referred to in II.2.2.2 of the obligations arising from the special contract conditions as stated in II.2.1. Excluded from this agreement are violations of the Special Contractual Conditions Regarding the Prevention of Disadvantages under Wirt-2143, No. 1.
- 2.2.2. An infringement is also deemed to have occurred:
- 2.2.2.1. If an employee assigned to execute the contract was not paid at least the remuneration, including the minimum remuneration, as made binding for the service in question under the Minimum Wages Act, a collective agreement declared generally binding or a statutory ordinance issued on the basis of the Posted Workers Act, or the Act on Temporary Agency Work (Wirt-214.1, No. 1.1.1.). This applies to each employee for each contractual period.
- 2.2.2.2. If the pay in accordance with a collective agreement has not been paid in the agreed amount to staff deployed for the performance of the contract (Wirt-214.1, No. 1.1.2.; Wirt-214.2., No. 1.1.). This applies to each employee for each contractual period.
- 2.2.2.3. If the minimum hourly rate of pay in accordance with procurement law has not been paid in the agreed amount to employees deployed for the execution of the contract (Wirt-214.1, No. 1.1.3). This applies to each employee for each contractual period.
- 2.2.2.4. If the proof of ILO compliance of a certain sensitive product (Wirt-2140) agreed in the Annex to the Tender Specifications: Proof of ILO Compliance cannot be presented upon delivery at the latest. This applies per sensitive product per partial delivery.
- 2.2.2.5. If, contrary to the agreed Special Contract Conditions Regarding the Advancement of Women (Wirt-2141), the requisite measure(s) for the advancement of women and/or the advancement of the compatibility of family and work has/have not been demonstrably implemented or initiated. This applies for each measure for each contractual period.
- 2.2.2.6. If, contrary to the agreed Special Contract Conditions Regarding Environmental Protection Requirements (Wirt-2145), the requirements agreed in the tender specifications are not met or the agreed measures are not implemented.

- 2.2.2.7. In the event of an infringement of the obligation to transfer the assumed obligations to subcontractors and/or agencies supplying staff and throughout the subcontracting chain (Wirt-214.1, No 2. regarding payment of specific minimum hourly rates of pay and specific collectively agreed wages; Wirt-214.2, No 2. regarding payment of specific collectively agreed wages; Wirt-2141, III.2 regarding measures for the advancement of women; Wirt-2145 No. 3 regarding environmental requirements under the terms of execution; Wirt-2144, I. regarding transfer of the agreements listed in this part (Part B) of the special contract conditions to subcontractors and/or agencies providing staff and throughout the subcontracting chain).
- 2.2.2.8. If, contrary to the obligation under II.1.2., the contractor or subcontractor failed to cooperate with the inspections to ascertain compliance with the observation of contract conditions in II.1.1 by not submitting in full the documents required for inspection, despite at least two reminders to do so with appropriate deadlines, or failing to provide access to the documents for inspection on the premises of the contractor or subcontractor.
- 2.2.3. The contractor is also obligated to pay a contractual penalty if a culpable infringement is committed by one of its subcontractors or agencies providing employees or by any subcontractor in its subcontracting chain.
- 2.2.4. If the forfeited contractual penalty for an infringement is disproportionately high, it shall be reduced by the contracting authority to an appropriate amount.
- 2.2.5. The sum of contractual penalties for the infringements cannot exceed a total of 5 percent of the value of the payment to be made to the contractor (excluding VAT). A contractual penalty forfeited on the basis of further contract conditions shall be offset against this maximum contractual penalty of 5 percent; unless otherwise agreed, contractual penalties forfeited here shall also be offset against the maximum amount of contractual penalties forfeited on the basis of further contractual conditions.
- 2.2.6. In addition, Sections 339 et seqq. of the German Civil Code (*Bürgerliches Gesetzbuch* – BGB) apply.

(Special Contract Conditions Regarding Inspections and Sanctions
Under the Berlin Tender and Procurement Act (BerlAVG) – Part B)

2.3. Termination; withdrawal

- 2.3.1. In the event of an infringement of the agreed contract conditions listed in II.2.1, the contracting authority may, either at its own discretion or on the basis of the underlying contract, terminate or withdraw from this contract.
- 2.3.2. The infringements listed under II.2.2.2. regarding contractual penalties are examples of reasons entitling the exercise of claims under II.2.3.1.

2.4. Price reduction; compensation

- 2.4.1. In the event of an infringement of the agreed contractual conditions listed under II.2.1., the contracting authority may, either at its own discretion or on the basis of the underlying contract, demand a reduction in price or compensation. Excluded from these claims are infringements of measures to prevent disadvantages under Wirt-2143, No. 1.
- 2.4.2. The infringements listed under II.2.2.2. regarding contractual penalties are examples of reasons entitling the exercise of claims under II.2.4.1.

(Note: In addition, the financial inspection of illegal work unit (Finanzkontrolle Schwarzarbeit) of the German Federal Customs Administration will also be informed if there is evidence of an infringement on the part of the contractor, one of its subcontractors or one of the agencies providing staff of the minimum work conditions pursuant to Section 128 (1) of the Competition Act (Gesetz gegen Wettbewerbsbeschränkungen) (Section 16 (6) BerlAVG)).