Declaration Regarding Grounds for Exclusion and Company Information

Please note the following:

Please sign the declaration and company information in the space provided in text form. For participants in the e-procurement procedure, the text form (if required: the digital signature) replaces the handwritten signature.

For all contracts reaching or exceeding the EU's threshold value, the contracting authority is obligated – in accordance with the Ordinance on Procurement Statistics (*Vergabestatistikverordnung* – VergStatVO) – to transmit certain data on the contract award procedure to the Federal Statistical Office of Germany.

With the introduction of requirements for EU-wide tendering of contracts (eForms), the contracting authority is obliged to state the size of the company in tender notices. The legal basis for this provision is Section 10a (1) of the Regulations for Awarding Public Contracts (*Vergabeverordnung* – VgV) in conjunction with Article 1 (2) and Article 2 No. 4 of Implementing Regulation (EU) 2019/1780.

The data to be provided under No. 14 is required to comply with these legal obligations.

With the introduction of requirements for EU-wide tendering of contracts (eForms), the contracting authority is obliged to state its business identification number (*Wirtschafts-Identifikationsnummer*) in tender notices. The legal basis for this provision is Section 10a (1) VgV in conjunction with Article 1 (2) and Article 2 No. 4 of Implementing Regulation (EU) 2019/1780. The data to be provided is required to comply with these legal obligations.

The company must state its business identification number (*Wirtschafts-Identifikationsnummer*) under No. 15.

As the business identification number is being introduced gradually, companies without one must provide another unique identification number, preferably the respective VAT ID (e.g. DE124356789) or a register entry number, in Germany preferably from the relevant commercial register (*Handelsregisternummer*, e.g. HRA 12345). Only natural persons may enter "*keine Angabe*" ("not specified") to protect their personal data.

In the case of consortia, a separate form must be completed for each member of the consortium and submitted with the bid. The declaration on grounds for exclusion and the information on the tenderer's company then refer to the declaration and information of the respective member of the consortium of tenderers.

The form is also to be used by other entities (e.g. subcontractors or affiliated companies) who are to perform parts of the contract or whose suitability the tenderer/ consortium of tenderers is reliant upon (reliance on the resources of other undertakings under Section 47 VgV); they are to provide the information or declarations required for them.

The contracting authority can also accept a European Single Procurement Document (ESPD) in place of this Declaration on Grounds for Exclusion and Company Information.

Candidates and tenderers can re-use a European Single Procurement Document if they have previously been awarded a contract providing they confirm the information contained therein remains correct.

If a European Single Procurement Document is submitted, the contracting authority may request all or part of the required documents at any time during the procedure, to the extent necessary for the proper conduct of the procedure. Otherwise, the documents shall be submitted upon separate request by the tenderer who is to be awarded the contract.

The contracting authority may require the candidate or tenderer to comment on the documents to be submitted.

Companies for which there are grounds for exclusion under No. 1 and Nos. 3 to 7 of the declaration will not be excluded from participation in the contract award procedure if the company has provided evidence that it:

has paid or committed to pay compensation for any damage caused by a criminal offense or misconduct;

has fully clarified the facts and circumstances relating to the offense or misconduct and the damage caused, through active cooperation with the investigating authorities and the public contracting authority; and

has taken suitable concrete technical, organizational, and HR measures to prevent further criminal offenses or further misconduct.

Businesses for which there are grounds for exclusion under No. 2 of the declaration will not be excluded from participation in the contract award procedure if evidence is provided that they have fulfilled their obligations by making the payment or by undertaking to pay the taxes, duties, and social security contributions, including interest, late payment, and penalties.

Starting from an estimated contract value of EUR 50,000 (excluding VAT), a public contracting authority is required to request information from the registry authority prior to awarding the contract whether there are any entries in the competition register concerning the tenderer to whom it intends to award the contract in accordance with

Section 6 (1) of the Competition Register Act (*Wettbewerbsregistergesetz* – WRegG). If a candidate or tenderer makes use of the capacities of other companies when awarding public contracts (reliance of the resources of other companies or subcontracting), the subcontractors must also be inspected with regard to the mandatory and optional grounds for exclusion (Section 47 (2) sentence 1 VgV).

The contracting authority may oblige the candidate or tenderer to submit to the contracting authority evidence in this regard from its subcontractors. Evidence may be provided in particular by submitting a self-assessment to the competition register.

(Name and address of the tenderer; company name as in the commercial register or similar)

Date:

Phone:

Email:

Identification number:

Recipient

Technische Universität Berlin
Hardenbergstraße 36
10623 Berlin

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

Declaration Regarding Grounds for Exclusion / Company Information

1. I/We are aware that under Section 123 (1) of the Competition Act (*Gesetz gegen Wettbewerbsbeschränkungen* – GWB) a company must at any point during a contract award procedure be strictly excluded from participation if the contracting authority is aware that a person whose conduct is imputable to the company has been convicted by final judgement or that a final administrative fine has been imposed on the company under Section 30 of the Act on Regulatory Offenses (*Gesetz über Ordnungswidrigkeiten*) for a criminal offense under:

a) Section 129 of the Criminal Code (*Strafgesetzbuch* – StGB) (forming criminal organizations), Section 129a StGB (forming terrorist organizations), Section 129b StGB (foreign criminal and terrorist organizations);

b) Section 89c StGB (financing of terrorism) or participation in such an offense;

c) Section 261 StGB (money laundering);

d) Section 263 StGB (fraud), provided that the criminal offense is directed against the budget of the European Union or against budgets administered by the European Union or on its behalf, provided that the criminal offence is directed against public budgets;

e) Section 264 StGB (subsidy fraud), provided that the criminal offense is directed against the budget of the European Union or against budgets administered by the European Union or on its behalf;

f) Section 299 StGB (taking and giving bribes in commercial practice), Sections 299a and 299b StGB (taking and giving bribes in the healthcare sector);

g) Section 108e StGB (taking of bribes by and giving of bribes to elected representatives) or Section 108f StGB (inadmissible representation of interests);

h) Sections 333 and 334 StGB (granting benefits and giving bribes), each also in conjunction with Section 335a StGB (foreign and international officials);

i) Article 2, Section 2 of the Act on Combating International Bribery (*Gesetz zur Bekämpfung internationaler Bestechung*) (bribery of foreign public officials in international business transactions); or

j) Sections 232, 233a (1-5) and 232b to 233a StGB (human trafficking, forced prostitution, forced labor, exploitation of labor, exploitation involving deprivation of liberty).

A conviction or the issuance of an administrative fine under the comparable provisions of other countries are deemed equivalent to a conviction or the issuance of an administrative fine within the meaning of Paragraph 1. The conduct of a person convicted by final judgement shall be imputable to a company if that person acted as the person responsible for the management of the company; this also includes supervision of management or the exercise of control in another manner in a managerial position.

2. I/We are aware that under Section 123 (4) of the Competition Act, a company must at any point during a contract award procedure be excluded from participation if the contracting authority is aware that the company has failed to meet its obligations to pay taxes, charges, or social security contributions and this has been established by a judicial or administrative decision having final and binding effect or the public contracting authority can prove the breach of the listed obligations in another manner.

3. I/We are aware that under Section 124 (1) of the Competition Act, a company may be excluded if:

a) The company has demonstrably breached applicable environmental, social, or labor obligations in carrying out public contracts;

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

c) The public contracting authority can demonstrate, in an appropriate manner, that the company has committed grave professional misconduct which renders its integrity questionable; Section 123 (3) shall apply mutatis mutandis;

d) The public contracting authority has sufficient indications that the company has concluded agreements or engaged in concerted practices with other companies which have as their object or effect, the prevention, restriction, or distortion of competition;

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

f) A distortion of competition results from the prior involvement of the company in the preparation of the award procedure, and such distortion of competition cannot be remedied by other, less intrusive measures;

g) The company has demonstrated significant or ongoing deficiencies in fulfilling a material requirement under a previous public contract or concession agreement, which resulted in the early termination of that previous contract, a claim for damages, or other comparable legal consequences;

h) The company 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

i) The company has attempted to unduly influence the decision-making process of the public contracting authority, has attempted to obtain confidential information

that may confer upon it undue advantages in the award procedure, or 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.

4. I am/We are aware that under Section 21 of the Posted Workers Act (*Arbeitnehmerentsendegesetz* – AEntG) candidates that have been fined at least two thousand five hundred euros for an infringement under Section 23 AEntG are to be excluded from participation in a tender for a supply, construction, or service contract for a reasonable period of time until their reliability has been proven to be re-established. The same applies even before regulatory fines proceedings are conducted where, given the particular case, the body of evidence leaves no reasonable doubt as to serious misconduct.

5. I am/We are aware that under Section 98c of the Residence Act (*Aufenthaltsgesetz* – AufenthG), candidates may be excluded from participation in a tender for a supply, construction, or service contract, if those candidates – or their representative authorized by statutes or law – have been subject to an incontestable fine of at least two thousand five hundred euros under Section 404 (2) No. 3 of Book Three of the Social Code (*Sozialgesetzbuch* – SGB III) or have been sentenced to an incontestable prison term of more than three months or a fine in excess of 90 daily rates under Sections 10, 10a, or 11 of the Act to Combat Undeclared Work and Unlawful Employment (*Schwarzarbeitsbekämpfungsgesetz* – SchwarzArbG).

6. I am/We are aware that under Section 21 SchwarzArbG, candidates are to be excluded for a period of up to three years from participation in a tender for a supply, construction, or service contract, if those candidates – or their authorized representatives under the articles of association or law – have been sentenced to a prison term of more than three months or a fine in excess of 90 daily rates or have been subject to a fine of at least two thousand five hundred euros under Section 8 (1) No. 2 and Sections 10 to 11 SchwarzArbG; Section 404 (1) or (2) No. 3 SGB III; Sections 15, 15a, 16 (1) Nos. 1, 1c, 1d, 1f, or 2 of the Act on Temporary Agency Work (*Arbeitnehmerüberlassungsgesetz* – AÜG); or Section 266a (1) to (4) StGB. The same applies even before criminal or fine proceedings are conducted if, given the particular case, the body of evidence leaves no reasonable doubt as to serious misconduct.

7. I am/We are aware that under Section 19 of the Act Regulating a General Minimum Wage (*Mindestlohngesetz* – MiLoG), candidates that have been fined at least two thousand five hundred euros on account of a breach of Section 21

MiLoG are to be excluded from participation in a tender for a supply, construction, or service contract for a reasonable period of time until their reliability has proven to be re-established.

8. I am/We are aware that companies shall be excluded from participation in a procedure for the award of a supply, construction, or service contract until proven self-cleaning in accordance with Section 125 GWB, if they have been fined in accordance with Section 22 (2) of the Supply Chain Act (*Lieferkettensorgfaltspflichtengesetz* – LkSG) due to a legally established violation under Section 24 (1) LkSG.

9. I/We hereby declare that no penalties or fines have been imposed on my/our company or on any person whose conduct is attributable to my/our company for the above-mentioned offenses or under comparable legislation of other countries, and that none of the above-mentioned grounds exist that could justify the exclusion of my/our company from participation in the contract award procedure process.

10. I/We understand that the non-submission or incorrectness of the above declarations may lead to my/our exclusion from this and future award procedures and to the termination of any contract awarded.

11. I/We understand that the contracting authority may require that my/our company demand the above declarations from subcontractors and that these must be submitted prior to the contracting authority's approval of a subcontract.

12. I/We fulfill the legal requirements for the performance of the services offered, in particular those concerning the capacity and authorization to exercise the professional activities.

13. I/We declare that I am/we are not aware of any entry in the competition register or in the Berlin corruption register concerning the company or person(s) acting with responsibility. Should my/our tender be shortlisted for the award of the contract, I/we will provide the necessary data to the central awarding office for the purpose of querying the competition register upon request.

14. Size of the company

☐ Micro company (up to 9 employees and up to 2 million euros turnover)

☐ Small company (up to 49 employees and up to 10 million euros turnover)

☐ Medium-sized company (up to 249 employees and up to 50 million euros turnover)

☐ Large company (over 249 employees and over 50 million euros turnover)

15. Statement of the national identification of the company

☐ Business identification number (*Wirtschafts-Identifikationsnummer*)

☐ D-U-N-S identification number

☐ Commercial register entry number (*Handelsregisternummer*)

☐ VAT ID

☐ Other identification number

☐ None (for natural persons)

[1] **The declaration and company information have been signed by:**

(First name, last name of natural person in text form)

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[1] In the case of an electronic application for participation or a written expression of interest under Section 126b of the German Civil Code, natural persons (e.g. sole proprietors or self-employed individuals) must provide their first and last names or their business name