

Will the new Federal Armed Forces Procurement Acceleration Act help to speed up procurement for the Bundeswehr?

PUTTING THE NEW FEDERAL ARMED FORCES PROCUREMENT ACCELERATION ACT TO THE TEST



Executive Summary

- The Act governs the awarding of all contracts for supplying products and services to the German Federal Armed Forces
- Lotting principle for awarding contracts waived
- Shortened appeal process curtail bidders' rights

The new Federal Armed Forces Procurement Acceleration Act (*Bundeswehrbeschaffungsbeschleunigungsgesetz*, "BwBBG") came into force on 14 February 2026. In light of the continued heightened

security situation, Germany finds itself compelled to make lasting improvements to its defence capabilities. This requires a rapid increase in the capabilities of the Federal Armed Forces (*Bundeswehr*). Streamlining procurement processes to make them faster and more efficient is now a priority. But does the new law actually contribute to this goal?

1. What products and services need to be procured in accordance with the BwBBG?

The procurement rules of the BwBBG now apply not only to military equipment, but to all contracts covering the



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requirements of the Bundeswehr, including those for planning and construction services and medical supplies.

The BwBBG encourages the Bundeswehr to procure a larger number of services and products that are already available on the market. This avoids lengthy procurement processes involving time-consuming development work. In cases where one company effectively holds a monopoly, the order can be placed directly based on the provider's unique selling proposition.

If the required product or service is not available on the market, the Bundeswehr can award contracts for innovative services by expressly adopting the innovation partnership as a procurement procedure, for example. This option is likely to be used more frequently for complex services, as the innovation partnership enables the Bundeswehr to partner with multiple companies at the same time. These companies will then develop the service independently from each other in a research and development phase – for which they will be compensated. Until now, companies usually had to carry out this phase at their own risk before the contract was awarded.

Existing exemptions under public procurement law have been broadened to include a wider range of "security interests" that qualify for these exemptions. However, each exemption must still be justified in detail based on the applicable criteria.

The BwBBG primarily applies to the awarding of EU contracts, while only the provisions on the awarding of contracts by lots and climate protection also apply to domestic awards. The law also applies to procurement procedures that are already ongoing. The current version of the BwBBG will expire at the end of 2035.

2. What procedural relief does the BwBBG provide?

The BwBBG offers procedural relief in an otherwise fiercely disputed area of public procurement law by lifting the requirement to divide tendered services into lots. While this would already have been justifiable for complex delivery services in particular, the clarification provides legal certainty. The rule also expressly applies to

domestic contract awards with order values below the EU thresholds.

The General Administrative Regulation on the Procurement of Climate-Friendly Services (AVV Klima) applies to neither EU nor domestic contract awards.

It is also important to note that participation in the award procedure may be restricted to companies based in EU, EEA, GPA member states and countries with which the EU has concluded free trade agreements. In view of the extension to include GPA member states and the focus on residency, the effects of the regulation are likely to remain limited.

The legislation also facilitates cooperation between contracting authorities and procurement bodies in other EU member states. It remains to be seen to what extent this will be utilised.

All other procedural provisions of the BwBBG are essentially clarifications. This includes the admissibility of negotiated procedures without a call for competition, particularly for interim awards to ensure uninterrupted service provision. In principle, granting relief in the case of subsequent requests for missing documents was already justifiable prior to the new legislation, in order to avoid bidders being disqualified from procedures due to minor infringements. Changes to orders in the event of a crisis were also already possible. With regard to the extension of framework agreements, the legislation merely refers to current EU law.

3. How has the appeal process changed?

According to the BwBBG, an unsuccessful competitor must raise an objection before initiating review proceedings, including in the case of direct awards. To raise an objection, the competitor must have been aware of the intended contract award, and the breach of procurement rules must have been apparent before the contract was awarded. The objection must be raised within 10 days. In many cases, proving that the breach was already apparent will be difficult.



If review proceedings are conducted and the public procurement tribunal rules in favour of the contracting authority, an immediate appeal to the competent Higher Regional Court has no suspensive effect. The contract can then be awarded from the date of the public procurement tribunal's decision. Once the contract has been awarded, the unsuccessful bidder may only assert claims for damages. This reduces the appeal process from just two instances – the first of which is a public authority and not a court of law – to just one instance with the public authority. Another conceivable – and constitutionally unobjectionable – solution which would also have sped up the procedure would have been to introduce provisions on the approval of contract awards and the associated weighing of interests.

If the public procurement tribunal identifies a breach of public procurement law, it does not necessarily have to declare the contract invalid, but can choose to impose other sanctions instead. Any fine payable by the contracting authority is limited to a maximum of 10% of the corresponding order value.

4. Conclusion

The intended procedural relief offered by the BwBBG is limited. The legislation contains numerous duplications and clarifications and is so full of references that it is almost illegible.

It is likely that the acceleration promised in the law's title will mainly be achieved through the shortened appeal process, assuming review proceedings are initiated in this market at all.

Although not primarily intended to speed up procurement processes, the relaxation of the requirement to award contracts by lots is to be welcomed. Coordinating bidders and contractors, as well as managing diverging warranty claims, often results in considerable additional work for contracting authorities.

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