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# SME-friendly public procurement in Germany?

Legal strategies and political challenges

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## Abbreviations

BbgMFG	Brandenburgisches Mittelstandsförderungsgesetz <i>Law on the promotion of SMEs of Brandenburg</i>
BbgVergG	Brandenburgisches Vergabegesetz <i>Procurement law of Brandenburg</i>
BerlAVG	Berlinerisches Ausschreibungs- und Vergabegesetz <i>Procurement law of Berlin</i>
BrMFG	Mittelstandsförderungsgesetz [Bremen] <i>Law on the promotion of SMEs [Bremen]</i>
ECJ	<i>European Court of Justice</i>
GWB	Gesetz gegen Wettbewerbsbeschränkungen <i>Federal Anti-Trust Law</i>
HmbVgG	Hamburgisches Vergabegesetz <i>Procurement law of Hamburg</i>
HMiStFöG	Hessisches Mittelstandsförderungsgesetz <i>Law on the promotion of SMEs of Hessen</i>
HVgG	Hessisches Vergabegesetz <i>Procurement law of Hesse</i>
ILO	International Labour Organization
LTMG	Landestariftreue- und Mindestlohngesetz [Baden-Württemberg] <i>Procurement law of Baden-Wuerttemberg</i>
LTTG	Landestariftreuegesetz [Rheinland-Pfalz] <i>Procurement law of Rheinland-Palatinate</i>
LVG LSA	Landesvergabegesetz [Sachsen-Anhalt] <i>Procurement law of Saxony-Anhalt</i>
MfG BAY	Mittelstandsförderungsgesetz [Bayern] <i>Law on the promotion of SMEs and the free professions of Bavaria</i>
MFG BW	Mittelstandsförderungsgesetz [Baden-Württemberg] <i>Law on the promotion of SMEs of Baden-Wuerttemberg</i>
MFG Hamburg	Mittelstandsförderungsgesetz Hamburg <i>Law on the promotion of SMEs and the free professions of Hamburg</i>
MFG LSA	Mittelstandsförderungsgesetz [Sachsen-Anhalt] <i>Law on the promotion of SMEs of Saxony-Anhalt</i>
MFG M-V	Mittelstandsförderungsgesetz [Mecklenburg-Vorpommern] <i>Law on the promotion of SMEs of Mecklenburg-Western Pomerania</i>
MFG NDS	Mittelstandsförderungsgesetz [Niedersachsen] <i>Law on the promotion of SMEs of Lower Saxony</i>
MFG NRW	Mittelstandsförderungsgesetz [Nordrhein-Westfalen] <i>Law on the promotion of SMEs of North Rhine-Westphalia</i>
MFG RLP	Mittelstandsförderungsgesetz [Rheinland-Pfalz] <i>Law on the promotion of SMEs of Rheinland-Palatinate</i>
MFG SH	Mittelstandsförderungsgesetz [Schleswig-Holstein] <i>Law on the promotion of SMEs of Schleswig-Holstein</i>
MFG SL	Mittelstandsförderungsgesetz [Saarland] <i>Law on the promotion of SMEs of the Saarland</i>

MFG TH	Thüringer Mittelstandsförderungsgesetz <i>Law on the promotion of SMEs of Thuringia</i>
NTVergG	Niedersächsisches Tariftreue- und Vergabegesetz <i>Procurement law of Lower Saxony</i>
RVO TVgG NRW	Verordnung Tariftreue- und Vergabegesetz Nordrhein-Westfalen <i>Procurement decree of North Rine-Westphalia</i>
SächsVergabeG	Sächsisches Vergabegesetz <i>Procurement law of Saxony</i>
SME	Small and Medium Sized Enterprise
STTG	Saarländisches Tariftreuegesetz <i>Procurement law of the Saarland</i>
ThürVgG	Thüringer Vergabegesetz <i>Procurement law of Thuringia</i>
TTG	Tariftreue- und Vergabegesetz Schleswig-Holstein <i>Procurement law of Schleswig-Holstein</i>
TtVG	Tariftreue- und Vergabegesetz [Bremen] <i>Procurement law of Bremen</i>
TVG	Tarifvertragsgesetz <i>Federal law on collective agreements</i>
TVgG NRW	Tariftreue- und Vergabegesetz Nordrhein-Westfalen <i>Procurement law of North Rine-Westphalia</i>
VgG M-V	Vergabegesetz Mecklenburg-Vorpommern <i>Procurement law of Mecklenburg-Western Pomerania</i>
VgV	Vergabeverordnung <i>Procurement Decree</i>
VOB	Vergabe- und Vertragsordnung für Bauleistungen <i>Regulations on Contract Awards for Construction Works</i>
VOL/A	Vergabe- und Vertragsordnung für Leistungen, Teil A <i>Regulations on Contract Awards for Public Supplies &amp; Services, Part A</i>
VOF	Vergabeordnung für freiberufliche Dienstleistungen <i>Regulations on Contract Awards for Services of the Liberal Professions</i>

## Introduction

Public procurement is an important major part of States' spending; within the OECD, public procurement accounted for an average of roughly one third of all general government expenditures in 2011 (OECD, 2013). Focusing on the EU solely, public procurement reaches a level of nearly one fifth of the GDP (European Commission, 2012).

As has been shown widely, public procurement spending with its high volume has been taken as a lever to foster certain social, ecological and economic goals (Bovis, 1998; McCrudden, 2007; Scherrer et al., 2010). Among these, regional development and the fostering of certain types of industries were not the least (Bovis, 1998; McCrudden, 2007). With a focus on public procurement as a means to influence regional development and economic outcomes as well as to foster employment and innovation, one anchor point springs to mind: Small and medium sized enterprises (SMEs). SMEs represent a vast majority of all enterprises and account for roughly two third of all jobs in the EU (Eurostat, 2011). However, looking at their position in public tendering, they are facing specific hindrances to and challenges in participation as well as certain disadvantages compared to big enterprises. Thereby, specific limitations SMEs face are strongly related to public tendering practices. Against this background, it comes as no surprise that the participation of SMEs is one of the points of concern of public procurement regulations and practices. In Germany, fostering SMEs in tendering is a part and subset of the cross-party political goal of '*Mittelstandsförderung*' (promotion of SMEs).

In the light of the recent interest in public procurement and its strategic use in the social sciences, the need for comprehensive overviews as a first step to further detailed and in-depth research of strategic public procurement arises. However, no comprehensive and inclusive outline of public procurement regulations with a focus on strategic procurement exists so far. Against this background, different Working Papers, as a part of the *Working Paper Series 'Comparative Governance'*, set out to give an overview of different strategic uses of public procurement and how these are embedded in German public procurement regulations at national level as well as in the regulations of the Federal States (*Länder*). Thereby, the first part (*Public Procurement as Social Policy? by Eva Katharina Sarter, Detlef Sack and Sebastian Fuchs, August 2014*) outlined the development and the contemporary use of social criteria. It showed that based on the insight that public tendering can be used as a means to promote social and political issues, social criteria in public procurement regulations in Germany set requirements tenderers have to fulfil: E.g. subnational legislation exists that stipulates that tenders are only to be awarded to enterprises that fulfil minimum standards relating to wages, equal pay or compliance with ILO core labour norms in the production process of the good to be purchased. It also showed that since 2008 an expansion of social criteria in subnational regulations took place that lead – at the same time – to a diversification of Fed-

eral States' regulations: While in the beginning of 2008, only two social criteria, namely compliance with minimum wages and promotion of apprenticeships, existed, in the 2014, between no and up to 13 different criteria are included in Federal States' laws. Thereby, even apparently similar criteria can be subject to divergent definitions and treatment in different Federal States' laws.

The second paper focusses on another strategic element in current (German) public procurement regulations: The participation of SMEs in public tendering. With a focus on SMEs, case studies in public tendering practices at national, regional and local level have been conducted. These have, however, mostly focussed on tendering *practices* and resulting hindrances for SMEs and leaned towards the analysis of Anglo-Saxon countries, where the academic (economic) study of public tendering has been on the agenda for some time (among others: Erridge, 2007; Fee et al. 2002; Loader, 2011; Fieseler/Wallau, 2010). The paper at hand takes a different approach: It aims at providing an overview of public procurement regulations in Germany with a focus *on provisions aiming at promoting SMEs' participation in public tendering*. Due to this aim, it does not have the intention to give a comprehensive legal account nor to compare the depth of the regulations.<sup>1</sup> Therefore, focus on the most important item of promoting SMEs is set while the reach of these (set by thresholds) as well as certain other regulations such as the stipulation of fast payment (as set e.g. in the *Law on the promotion of SMEs of Rheinland-Palatinate (MFG RLP)*) are not further specified. It starts with an outline of the connection between public procurement and SMEs, which is followed by an overview of the hindrances SMEs encounter when participating in tendering. Based on this general overview, it examines public procurement regulations in Germany. Starting with an overview of public procurement regulations in Germany in general, it then outlines the use of different core items in fostering SME participation in public procurement. In the concluding remarks, the main findings are summarised and the issue of SMEs in public tendering is put into a general framework of public tendering regulations in Germany.

The paper argues that the fostering of SMEs is a core concern of strategic procurement. In contrast to social criteria, thereby, provisions relating to SMEs are not based on preferential awarding schemes but focus on an SME friendly procurement process, which is largely based on procedural means to foster SMEs by tackling the hindrances they (may) encounter. It furthermore argues that the recent developments of diversification and expansion of social criteria may conflict with limited capacities of SMEs and their demand for unified criteria and limited administrative practices.

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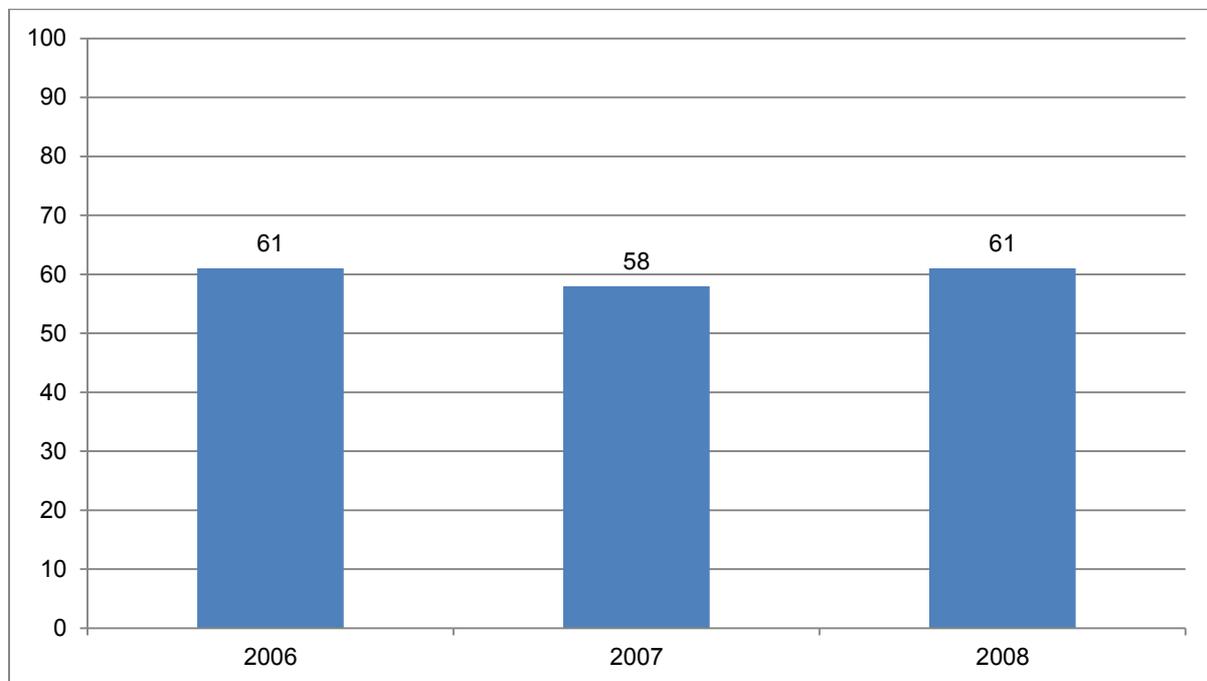
<sup>1</sup> Therefore the paper focusses on laws and decrees only and does not take governmental guidelines or administrative handbooks concerning the promotion of SMEs into account.

## 1. SMEs and public purchasing

Public sector purchasing (public procurement) accounts for important amounts; in the EU, it made up for roughly 19% of the GDP in 2011 (European Commission, 2012). Given the high volumina of public spending via public procurement, public purchasing becomes an interesting market for enterprises.

Small and medium sized enterprises are an important economic factor throughout Europe. They account for a vast majority (99,8%) of those businesses in the EU 27 in 2008, which are not financial businesses as well as for 66,7% of jobs (Eurostat, 2011: 11). Also in Germany, SMEs accounted for 99,3% of the companies and a share of 60,2% of employees in 2011 (Destatis, 2014a). However, while SMEs constitute the vast majority of all enterprises, the share of SMEs in public procurement is far lower: They only accounted for 64% of all public contracts in the EU in 2005 (European Commission, 2008a: 4). As figure 1 shows, these proportions seemed rather stable over the following years (EPEC, 2010)<sup>2</sup>.

**Figure 1: Share of SMEs in successful bidding (prime contractors only, in %)**



**Source:** EPEC 2010

However, despite the rather high share of SMEs in successful bidding, another features shows a different picture: As the *European Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts* (SEC(2008)2193; European Commission, 2008a) outlined, SMEs generated 58% of the turnovers of the EU economy as a whole but accounted for only 42% of the value in public contracts (above threshold) as prime contractors in

<sup>2</sup> The last study was based on a slightly different estimation methodology so that the data is not directly comparable (EPEC 2010).

2007 (European Commission, 2008a: 4). Similar to the development of the share of SMEs in successful bidding, also the share of SMEs by value of contract did not differ much in the following years. Thus, in 2008, SMEs only accounted for 38% of the value put out by public contracts (EPEC 2010). Figure 2 contrasts these two observations.

**Figure 2: Share of SMEs in public procurement by successful bidding and value (2008)**



Source: own account, data from EPEC 2010

Thus, especially for small and medium sized enterprises<sup>3</sup>, not only the size of the market is of high importance but also its accessibility, i.e. whether they are able to participate in public tendering and to access the market. Given the high volumina of public spending and the importance of the market governed by public contracts, it is not only from the perspective of

<sup>3</sup> SMEs are defined by the European Commission as “[...] those with fewer than 250 employees and which are independent from larger companies. Furthermore, their annual turnover may not exceed €50 million, or their annual balance sheet exceed €43 million.” (European Commission, 2008b: 7)<sup>3</sup>. Thereby, SMEs as a category are furthermore differentiated into micro-enterprises (i.e. those with fewer than 10 employees), small enterprises (which have at least ten and at most 49 employees) and medium-sized enterprises with between 50 and 249 employees (European Commission, 2003). Taking this recommendation as a guide line, the German Statistical Office (*Statistisches Bundesamt*, Destatis) also uses the same definition (Destatis, 2014b). However, in Germany SMEs are not the only reference point. Notwithstanding the importance of SMEs, in Germany, a further – and commonly interrelated concept – exists: The ‘*Mittelstand*’. In German politics the term ‘*Mittelstand*’ is of high importance and is seen as the ‘core’ of Germany’s economy and its economic wellbeing. Thereby politicians and political programmes often postulate the special importance of the ‘*German Mittelstand*’, the Federal Government introduces special commissioners for *Mittelstand*-related questions and laws and special funding-initiatives try to foster investments and growth of *Mittelstand* companies. Furthermore it is even used in marketing for Germany as a target market for foreign investors in referring to the “German *Mittelstand*” (BMW i 2013). As has been shown, the definition of SMEs relates to a quantitative measurement envisioned to capture a specific group of enterprise with a limited number of employees and a limited annual turnover. In contrast, despite the high importance of the *Mittelstand*, no clear cut, universally agreed on binding definition of *Mittelstand* exists (Destatis, 2014). Thereby, two distinct approaches can be stated. The first is to relate the notion of *Mittelstand* to the internationally used concept of SMEs, using them largely synonymously. The second is related to an inherently different concept, which defines a far more qualitative concept than that of SMEs. Thus, for Krämer (2003: 10) and Mühlentkamp (2003: 240), *Mittelstand* refers to enterprises in the field of crafts, trade, liberal professions, or services which are led by the owner(s) and not primarily financed by the capital market. Against this background, and the fact that most legal regulation in question relate to either SMEs or a concept of *Mittelstand* that is synonymous to that of SMEs or use the term of *Mittelstand* without defining it, in this paper, both German terms will be referred to as SMEs.

SMEs that SMEs' participation and SMEs' share in public tendering is important: Given the important share of SMEs in the overall economy as well as their potential for job creation and innovation as well as the teleological importance accorded to a level playing field and competition "[...] consensus has arisen [...] that SMEs merit special policy attention, [...]" (Kidalov/Snider, 2011: 3). Governments are concerned with the economic position of SMEs and their ability to participate in public tendering and to access the public procurement market and that "[A]ttention to small businesses, or small- and medium-sized enterprises [...]" represents a particularly important area of public procurement policy." (Kidalov/Snider, 2011: 1) In this context, the question arises, how lawmakers try to foster the participation of SMEs. Furthermore, enabling SMEs to participate in public tendering is thought to have positive impact beyond the teleological aim to "[...] ensure a level playing field for all economic operators wishing to participate in public tendering." (European Commission, 2008a: 2). Higher participation of SMEs is likewise thought to have a positive impact on the economy as a whole (European Commission, 2008a:2). Also the output of public tendering is supposed to be influenced positively as SMEs' participation in public tendering "[...] will result in higher competition for public contracts, leading to better value for money for contracting authorities." (European Commission, 2008a: 2) Last but not least, SMEs are said to be an important part of political and economic strategies regarding employment and innovation (Fee et al., 2002).

### **1.1 Obstacles for participation of SMEs**

Given the limited size of SMEs, they encounter a rather specific situation regarding public tendering: On the one hand, public contracts are an interesting field of activity – especially during times of recession. On the other hand, their ability to participate in public tenders is restricted by limited resources compared to big companies. In this context, certain specific problems arise for SMEs. First of all, the size of the contracts is an important point to be considered. For large scale tenders, SMEs might not be able to cover the full range of the contracts. Largely qualified as one of the major obstacles, large scale tendering poses a key obstacle for SMEs (see among others Bovis, 1998; Fee et al., 2002; Loader, 2005; Morand, 2003; European Commission, 2008a) Thus, Morand notes that by putting out tenders for large amounts "[...] government's purchasing activities inevitably discriminate, albeit unwittingly, against SMEs." (2003: 302). In the context of large tenders, a further issue demands attention: Joint bidding as this can provide a meaningful way to foster SMEs' abilities to take part in tendering even if for large scale contracts. When a contract covers a range of works that an individual SME might not be able to fulfil on its own, joint bidding of several SMEs might be an option to still be able to participate. Therefore, "[S]upplier consortia could provide a means for small firms to enhance their capacity." (Loader, 2011: 292) Thus, it becomes

important, whether a number of individual companies can form a consortium and whether consortia have any disadvantages in the tendering process.

Second, as the availability of time and financial resources is limited for SMEs to a greater extent than for large companies, the requirements administrative procedures set gain paramount importance as they determine the amount of preparatory work necessary to participate in tendering (see among others Bovis, 1998; Fee et al., 2002; European Commission, 2008a). As Loader (2005) showed in her study, "overly prescriptive requirements" in public tendering procedures were one of the major concerns of SMEs, while (perceived) restrictive requirements were mentioned to a far lesser amount (23% of the respondents in her study mentioned the latter as a barrier for tendering against 56% who referred to the former) (Loader, 2005: 21, Table 4). Third, accessibility of information has been stated as a problem of and in public tendering (see among others Fee et al., 2002; Loader, 2005; European Commission, 2008a).

Thereby, SMEs' participation in public tendering as well as their chances to be awarded public contracts is majorly influenced by government policies and purchasing procedures; SMEs' chances to be awarded public tenders can be influenced in two ways. First, the selection criteria used can either treat SMEs similarly to other companies or can become a lever for the promotion of business opportunities for SMEs (for an (also historical) overview of other linkages between public procurement and social policy goals as well as the development of social criteria see among others McCrudden, 2007; for an overview on the use of social criteria in German public procurement policies see Sarter/Sack/Fuchs, 2014). However, it seems doubtful whether preference schemes for SMEs would be conform to European legislation (Bovis, 1998; Jurčík, 2013). This especially holds true in the light of an ongoing dispute between the European Commission and Greece regarding the question whether a system that excludes enterprises because of their budget is conform to European law<sup>4</sup> (European Commission, 2013: 10). Recently, this dispute has been transferred to the ECJ (Vergabeblog, 2014).

Second, and maybe even more importantly, the procedural choices for tendering are of paramount importance as they set the framework which enables or hinders the participation of SMEs in public tendering. Thereby, three characteristics are of special importance: a) administrative practices, b) the allotment practices, i.e. the definition of the specific tenderers as well as c) information practices and the accessibility of information. Attention to SMEs can,

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<sup>4</sup> The respective Greek regulation is based on a registry of all approved domestic construction enterprises divided into groups according to their budget size. The European Commission states that "This system of compulsory registry results in the exclusion of companies that have the economic, financial, professional and technical capacity to perform a given contract from the relevant tendering procedure, only because their financial capacity is different - usually greater - than the specific budget class which is allowed for a given procedure. Such a restrictive regime is in breach of the rules of Directive 2004/18/EC and of the fundamental principles of equal treatment and non-discrimination on which the EU public procurement rules are founded." (European Commission, 2013: 10)

thus, focus on 'levelling the playing field' by enabling SMEs to participate in public tendering on equal terms with bigger enterprises. This approach calls for a special attention for the procedures used as well as for the amounts put out in a specific tender.

## 2. Public procurement regulation and SMEs in Germany

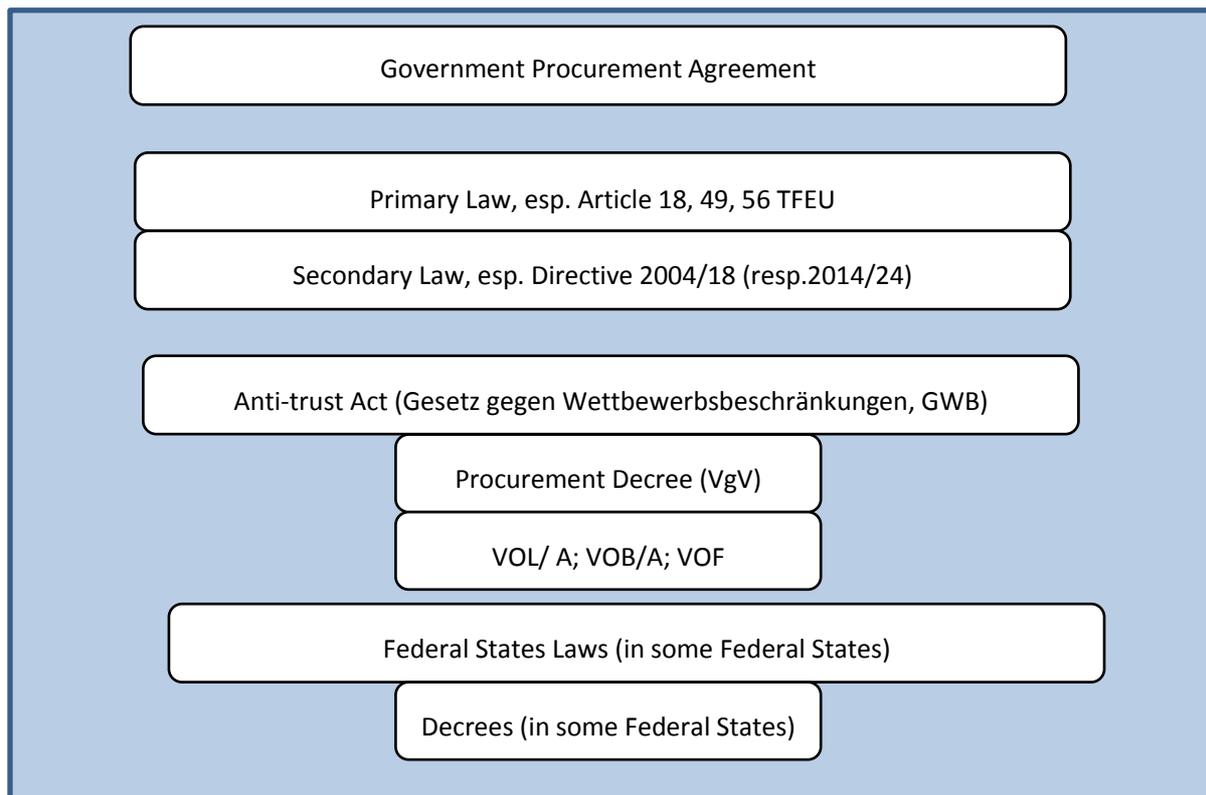
In Germany, high political importance is accorded to SMEs as well as to the *Mittelstand*; they provide an important political point of reference and the fostering of SMEs is high on the political agenda. Given the paramount importance SMEs have within the German economy as well as in the political landscape, it comes as no surprise that the participation of SMEs in public tendering is an important point of concern in regulations regarding public procurement in Germany.

Germany is a federal State with shared legislative competence. The Constitutional Law (*Grundgesetz*) lays down the principle of shared responsibility in law making, whereby in some fields law making is confined to the national level of the Federal State while in other fields, the Federal States (*Länder*) are given sole or shared responsibility (commonly labeled '*konkurrierende Gesetzgebung*' in German). While the former is e.g. the case in the field of educational policies, the latter is (among others) relevant for economic regulations, which are part of shared law making. Thereby, both, the Federal State as well as the Federal States are entitled to law making. However, it is important to state that in the fields of shared law making, Federal State's law has supremacy over Federal States' laws; so that Federal States can pass laws within the framework of Federal law.

Against the background of German Federalism, legal regulations regarding public procurement are set at two distinct level: At national level, first, the Anti-trust Act (*Gesetz gegen Wettbewerbsbeschränkungen, GWB*) establishes rules for public tendering. The concern on the participation of SMEs in public procurement is one of the criteria with the longest tradition in German public procurement regulations and was implemented since the 1970s (Mühlenkamp 2003: 249). In the course of the reform of the GWB in 2009, a distinct stipulation was strengthened that aimed at improving the conditions for SMEs' participation in tendering procedures. Today, the GWB defines competition, transparency and general non-discrimination (§97.1 & §97.2) as the general principles of public procurement and stipulates that tenders are to be awarded only to 'skilled, efficient, and reliable' enterprises that comply with laws (§97.4); the most economically advantageous tender is the sole award criteria (§97.5). §97.3 GWB is dedicated to the participation of SMEs in public tendering. It stipulates that the interests of SMEs are primarily to be taken into account and lays out requirements for public tendering. In the following it outlines the principles that are meant to enhance SMEs participation in public tendering. As will be shown, also the federal *Regulations on Contract Awards for Public Supplies and Services, part A (Vergabe- und Vertragsordnung für Leistungen, Teil*

A, VOL/ A) and the federal *Regulations on Contract Awards for Construction Works, part A* (*Vergabe- und Vertragsordnung für Bauleistungen, Teil A, VOB/ A*) contain such measures.<sup>5</sup>

**Figure 3: Public Procurement Regulations - a schematic outline**



**Source:** Sarter et al., 2014 **Notes:** Without sector specific or defense regulations, regulation of concessions and budgetary law.

Second, also at subnational level, laws and decrees exist that lay down stipulation on tendering: Next to existing Federal regulations, the majority of Germany's Federal States have passed legislation at subnational level. Also at this level, the participation of SMEs is a rather longstanding point of concern: Since the early 2000s, subnational regulations of public procurement foresee a special interest in the participation of SMEs in public tendering (from 2002 provisions aiming at the promotion of SMEs' participation in public tendering existed in Saxony).<sup>6</sup>

Today, stipulations that shall enhance SMEs' capacity to participate in public tendering are a typical part of national legislation as well as of Federal States' laws. Two sets of legal regulations (may) foresee regulations regarding tendering procedures in relation to SMEs: In con-

<sup>5</sup> The federal Procurement Decree (*Vergabeverordnung, VgV*) does not include provision regarding SMEs. The VOF which regulates purchasing of freelance work is not treated in this paper. Neither will decrees with not universal reach (e.g. decrees only regulating the purchase by ministries) or administrative provisions be treated here.

<sup>6</sup> As mentioned above, procurement-related regulations have already been established in the 1970s in the subnational laws concerning SMEs. The focus here, however, lays on the specific procurement laws.

junction with procurement laws, also existing laws on SMEs (may) set rules for procurement practices at the subnational level. Structurally, three main variants of subnational legislation can be distinguished. First, a group of Federal States that have public procurement laws that include stipulations regarding the participation of SMEs as well as stipulations regarding public tendering in their SMEs laws. Second, some Federal States have stipulations regarding SMEs in their public procurement rules but no public procurement related ones in the SME laws or no SME laws at all. Third, in some Federal States, only SME law lay out rules for public tendering while public procurement law does not include stipulations on SMEs or does not exist at subnational level in these Federal states. Baden-Wuerttemberg is a specific case, as it does not have a general public procurement law but solely the law on compliance with collective agreements and minimum wages in public tendering (*Landestariftreue- und Mindestlohngesetz, LTMG*). Table 1 shows where regulations exist in the different Federal States.

**Table 1: SME regulations in German subnational law – Overview**

	SMEs in Public procurement law	Public procurement in Law on the promotion of SMEs
Baden-Wuerttemberg	-	+
Bavaria	no public procurement law exists	+
Berlin	-	no law on promotion of SMEs
Brandenburg	-	+
Bremen	+	+
Hamburg	+	+
Hesse <sup>a)</sup>	+	-
Lower Saxony	+	+
Mecklenburg-Western Pomerania	+	-
North Rhine-Westphalia	+	+
Rheinland-Palatinate	-	+
Saarland	-	+
Saxony	+	no law on promotion of SMEs
Saxony-Anhalt	+	-
Schleswig-Holstein	+	-
Thuringia	+	-

**Source:** own compilation **Notes:** a) Promulgated as art. 1 and 2 of the 'Law on the promotion of SMEs and public procurement' (*Gesetz zur Förderung der mittelständischen Wirtschaft und zur Vergabe öffentlicher Aufträge*).

## 2.1 Allotment

As has been shown, one of the main hindrances to the participation of SMEs in public tendering are large scale tenders public tendering. In this context, a first and maybe the most important stipulation of German public procurement law is to be found: The requirement that contracts are to be split. GWB states in §97.3.2 that “Tenders are to be split in amount (partial lots) as well as according to the content or by or type or trade (technical lots).” However, despite the clear stipulation of splitting tenders, no further specifications are made. As a study for the Federal Ministry of Economy and Energy on the stipulations of §97.3 GWB points out, contracting authorities are given wide discretion, also regarding the size of the lots. Thereby, contracting authorities do not only have to contend the requirement to split tenders into lots but also have to contend further principles of public procurement, such as the requirement to award the contract to the most economically advantageous tender (§97.5). In this context a general line of conflict between bigger contracts (which are said to generate volume effects and reduce administrative costs) and smaller lots which enable equal opportunities for SMEs and are thereby said to stimulate competition can be stated (BMW, 2012: 9). Contracting authorities, thus, ought to weigh the requirements of efficient procurement on the one hand and the interests of the *Mittelstand* on the other.<sup>7</sup>

The requirement to split tenders as outlined by the GWB is then reiterated not only in the VOL/A (§2.2), VOB/A (§5.2) but also in various subnational public procurement laws: A general requirement to split tenders into (partial and technical) lots is – albeit already binding – repeated at subnational level in the laws on the promotion of SMEs of Baden-Wuerttemberg (§22.1 *Mittelstandsförderungsgesetz*, MFG BW), Bavaria (Art. 18.1 *Mittelstandsförderungsgesetz*, MfG BAY), Brandenburg (§5.3 *Brandenburgisches Mittelstandsförderungsgesetz*, BbgMFG), Bremen (§8 *Mittelstandsförderungsgesetz*, BrMFG), Lower Saxony (§14.2 *Mittelstandsförderungsgesetz*, MFG NDS), Rheinland-Palatinate (§7.2 *Mittelstandsförderungsgesetz*, MFG RLP), and the Saarland (§17.1 *Mittelstandsförderungsgesetz*, MFG SL).<sup>8</sup> Also the public procurement laws of Bremen (§4 *Tariffreue- und Vergabegesetz*, TtVG), Mecklenburg-Western Pomerania (§4 *Vergabegesetz Mecklenburg-Vorpommern*, VgG M-V), Lower Saxony (§9.1 *Niedersächsisches Tariffreue- und Vergabegesetz*, NTVergG), North Rhine-Westphalia (§3.7 *Tariffreue- und Vergabegesetz Nordrhein-Westfalen*, TVgG NRW), Saxony-Anhalt (§3.2 *Landesvergabegesetz*, LVG LSA), Schleswig-Holstein (§3.8 *Tariffreue- und Vergabegesetz Schleswig-Holstein*, TTG) and Thuringia (§3.2 *Thüringer Vergabegesetz*, ThürVgG) foresee requirements to provide partial and technical lots. Last but not least, the Hesse law (§6.1 *Hessisches Vergabegesetz*, HVgG) makes al-

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<sup>7</sup> A rather broad jurisdiction exists on the issue of (partial and technical) lots; for further information see among others BMW (2012)

<sup>8</sup> The Baden-Wuerttembergian Law on the promotion of SMEs, however, only outlines the necessity of splitting tenders into lots without reference to partial and/ or technical lots.

lotment requirements explicit.<sup>9</sup> Two Federal States explicitly extend the reach of the Federal regulations: The Law on the promotion of SMEs of Brandenburg (§5.3 BbgMFG) and Lower Saxony (§14.2 MFG ND) foresee that allotment also has to be exercised when awarding directly. North Rhine-Westphalia (§3.7 TVgG NRW), and Schleswig-Holstein (§3.8 TTG) stipulate allotment also for tendering under thresholds.

An exception to this requirement of partial and technical lots is – at national level – only foreseen if ‘economic or technical reasons demand it’ (§97.3 GWB; §2.2 VOL/A; §5.2 VOB/A). The Law on the promotion of SMEs of Baden-Wuerttemberg (§22.2 MFG BW) and Rheinland-Palatinate (§6.2 MFG RLP) as well as the Hesse law (§6.1 HVgG) reiterate this. Also the public procurement laws of Mecklenburg-Western Pomerania (§4 VgG M-V), Lower Saxony (§9.1 NTVerG), North Rhine-Westphalia (§3.7 TVgG NRW), Schleswig-Holstein (§3.8 TTG) take this stipulation up.

In practice, allotment is of paramount importance for procurement strategies in Germany (BMW, 2012). This is, however, not always nor solely based on the intention to foster SMEs: It has been shown that public authorities restrict the size of the lots also based on other reasons: Thus, partial and technical lots with an assessable amount are also seen as a means to securing the supply (BMW, 2012: 5) as well as to fostering regional suppliers (BMW, 2012: 37). Thereby, it has been indicated that technical lots seem to be more important than partial lots (BMW, 2012: 38).

## 2.2 Consortia

As has been outlined in the context of the specific situation encountered by SMEs in public tendering, large scale tenders are among the most important hindrance to SMEs' participation in public procurement. One of the possible alleviations is the formation of a consortium. This can be a means for SMEs to participate in tendering even if they would not be able to fulfil the whole project on their own account. Therefore, the question whether or not and under which conditions the formation of consortia and their participation in public tendering is permitted in Germany. At Federal level, the VOL/A (§6.1 respectively §6.2 VOL A-EG) and the VOB/A as well as the VOB A-EG (§6.1.2) state that consortia of bidders are not only allowed but also are to be treated equally to individual bidders. Also the laws on the promotion of SMEs of Brandenburg (§5.4 BbgMFG), Baden-Wuerttemberg (§22.3 MFG BW), Lower Saxony (§14.3 MFG NDS), Rheinland-Palatinate (§6.3 MFG RLP) as well as the law of the Saarland (§17.2 MFG SL) include similar provisions. In the realm of procurement specific regulations only the law of Hesse (§6.2f. HVgG) foresees such a stipulation.

Given the fact that forming a consortium is not only permitted but that consortia and individual bidders are to be treated equally, it comes as no surprise that, in practice, SMEs tend to

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<sup>9</sup> However, not all laws explicitly mention the terms technical and partial lots.

use of this option to “enhance their capacity” (Loader, 2011: 292) with the result that consortia are, in Germany, a „popular form of cooperation for the Mittelstand“ in public tendering (IHK Trier, 2012 translation by authors).

### 2.3 Prequalification schemes

Given the restricted resources of SMEs, the amount of administrative requirements has been stated as one of the major obstacles to the participation of SMEs in public tendering. Against the background that administrative practices are one of the major concerns of SME friendly tendering, various measures are taken that aim at reducing administrative requirements. One of these is the use of prequalification schemes. Prequalification schemes are meant to reduce administrative requirements by certifying that a given enterprise fulfils certain requirements. Thereby they shall facilitate participation in tendering.

The option to install and use prequalification schemes is thereby given by Federal law; §97.4a of the GWB explicitly allows the inception of prequalification schemes; also the VOL/A states the general possibility to make use of prequalification schemes (§6.4 respectively §7 EG.4). Contrary to these two regulations that only state the general possibility, the VOB/A refers regarding construction works to a specific scheme (*Verein für die Präqualifikation von Bauunternehmen e.V.*) and outlines the requirements here fore. Furthermore, a range of Federal States’ public procurement laws (Berlin §4 BerlAVG; Bremen §8 TtVG; Hesse §7.2 HVgG; Lower Saxony §8.1 NTVerG; North Rhine-Westphalia §6.1 TVgG NRW; Saarland §2.5 STTG; Saxony §3.2 SächsVergabeG; Saxony-Anhalt §6 LVG LSA; Schleswig-Holstein § 6 TTG; Thuringia §7.2 ThürVgG) reiterate the possibility to use prequalification schemes. However, while further stipulations might exist, even those Federal States’ laws that take up the topic do not specify the procedures as well as the necessary requirements for obtaining prequalification. Further research into the nature, requirements and the impact of the existing prequalification schemes remains to be done.

Yet, some remarks on the real impact of prequalification schemes shall not be omitted: While prequalification schemes have the potential to reduce administrative requirements and lower administrative costs as well as financial and personnel resources needed in tendering, it should not be assumed that prequalification schemes always provide a positive impact on the participation of SMEs. At the same time as having the potential to facilitate administrative requirements, prequalification schemes can also have excluding impacts if they set thresholds which favour specific enterprises. Thus, e.g. high costs for prequalification can negatively influence SMEs’ (and especially microenterprises’) capacity to participate in tendering. Whether or not prequalification schemes can unfold as a means to facilitate SMEs’ access to public contracts, thus, depends on the specific conditions and practices. Therefore, when

considering the impact of a specific prequalification scheme, the specific conditions have to be analysed.

## 2.4 Further subnational regulations

In addition to reiterating the stipulations of the national law, some Federal States foresee further regulations in order to facilitate participation of SMEs in tendering for public contracts. Thereby, these regulations – laid down in public procurement law or in the laws on the promotion of SMEs tackle further issues that remain unregulated at national level. These regulations can relate to bureaucratic hurdles posed by administrative requirements, subcontracting, and information. In addition to these features, one subnational regulation, namely the law in Hesse, also sets requirements with regard to public-private partnerships. In addition to regulations on allotment, general contractors and subcontracting as well as the participation of SMEs in public private partnerships, some Federal States' laws also tackle the issues of administrative requirements and information.

### 2.4.1 General contractors and subcontracting<sup>10</sup>

At subnational level, in addition to stipulations relating to national law, Federal States' laws furthermore have stipulations that exceed the requirements of national law. Thus, Bremen (§8 BrMFG) and Rheinland-Palatinate (§7.2 MFG RLP) state in their laws on the promotion of SMEs that the award of contracts to general contractors is to be but an exception. Bremen (§4 TTVG) stipulates this regulation in its procurement law, too, as does Lower Saxony (§9.1 NTVergG).

Further regulations exist regarding the use of subcontractors: Thus, the laws on the promotion of SMEs of Brandenburg (§ 5.5 BbgMFG), Baden-Wuerttemberg (§22.4 MFG BW), Lower Saxony (§14.4 MFG NDS), Rheinland-Palatinate (§7.2 MFG RLP) and the Saarland (§17.3 MFG SL) as well as the public procurement law of Hamburg (§5.3.1 *Hamburgisches Vergabegesetz*, HambVgG) state that in case of subcontracting the main contractor is obliged to treat SMEs preferentially. These Federal States' laws also contain the regulations that a subcontractor must not be submitted to conditions worse than those encountered by the general contractor (Brandenburg (§5.5. BbgMFG), Baden-Wuerttemberg (§22.4.4 MFG BW), Hamburg (§5.3 HambVgG ), Lower Saxony (§14.4.4 MFG NDS), Rheinland-Palatinate (§7.2 MFG RLP) and the Saarland (§17.3 MFG SL)).

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<sup>10</sup> In subnational regulations, a broad range of stipulations related to subcontracting, which also tackle SMEs and their position in public tendering. Next to those mentioned in the text are among others, stipulations such as that contractors have to act according to the principles laid down in public procurement law when subcontracting as well as stipulations which prohibit to impose conditions on subcontractors which are worse than for the general contractor. However, due to the focus of the paper, only the most important ones will be outline in the following.

#### 2.4.2 Public Private Partnerships

Hesse's law on the award of public contracts contains a further, specific regulation regarding the promotion of SMEs: It stipulates that public-private partnerships are to be planned in a way that SMEs can participate (§8 HVgG). This regulation is not only rather specific but also unique; no similar provision exists in any of the other laws on SMEs or public procurement.

#### 2.4.3 Regulations regarding information of SMEs and their participation in restricted procedures

The public procurement laws of Hamburg (§4.1 HambVgG), Lower Saxony (§9.2 NTVergG), Saxony-Anhalt (§3.1 LVG LSA) and Thuringia (§3.1 ThürVg) foresee that SMEs shall be invited to participate in direct awards as well as in restricted procedures.

#### 2.4.4 Proof of qualification: Master craftsmen

As has been shown above, the GWB stipulates that tenders are to be awarded to skilled enterprises only. In this context, three Federal States, namely Bavaria (§18.2 MFG BAY), North Rhine-Westphalia (§18.1 MFG NRW) and Rheinland-Palatinate (§7.4 MFG RLP), have regulations in place that are meant to promote the participation of SMEs. Their laws on the promotion of SMEs stated that a '*Meisterbrief*'<sup>11</sup> will be seen as proof of qualification, competence and skills (*Nachweis für Fachkundigkeit*). In North Rhine-Westphalia (§18.2 MFG NRW) and Rheinland-Palatinate (§7.4 MFG RLP), this also refers to equivalents of a Meisterbrief.<sup>12</sup> Thereby, administrative burdens of proof of competence shall be alleviated for those enterprises concerned.

#### 2.4.5 Regulations regarding electronic databases for public tendering

Above and beyond these regulations, some Federal States, such as Hesse require by law to upload information on all tendering procedures on a specific website. The Hesse law (§5 HVgG) requires that all tenders as well as other notes in the context of public tendering must be uploaded to a unified database, which is free-of charge for the users. This, however, does not affect other and further means of making the procedures public. Also §3.8 TVgG stipulates that contracting authorities from North Rhine-Westphalia shall place their invitation for tenders on the electronic free-of-charge platform of North Rhine-Westphalia (for parts of the Federal States' government, this requirement is mandatory). A similar provision is in place in Saxony-Anhalt (§3.3 LVG LSA). Also Thuringia (§3.3 ThürVgG) stipulates that some contracting authorities have to announce their invitations for tenders on an electronic data-

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<sup>11</sup> Germany features a long-grown system of high qualification hurdles and restrictions in the craft sector. Aside a basic qualification level (*Handwerksgeselle*), in many trades a second qualification level can (or must) be reached, the master craftsmen (*Handwerksmeister*) who holds a master craftsmen title (*Meisterbrief*). Certain trades may only be operated by such a master craftsman (e.g. roofers, electrical trade). The '*Meisterbrief*' has a long standing history in Germany and is widely acknowledged as a proof of high-quality work and security.

<sup>12</sup> While North Rhine-Westphalia refers to equal qualifications in §7.2 of the Crafts Law (*Gesetz zur Ordnung des Handwerks*), Rheinland-Palatinate mentions §56 of the Vocational Training Law (*Berufsbildungsgesetz*). Thus, experienced craftsmen without a master qualification (*Altgesellen*) and certain university graduates (e.g. engineers) are covered, too.

base, which is also open for other contracting authorities. This database is free of charge for tenderers while local authorities have to pay a fee. In Schleswig Holstein contracting authorities shall electronically announce their invitation for tenders. However, neither concrete information nor binding requirements are given.

### **Concluding remarks**

SMEs are a highly important part of the economy accounting for a vast majority of all companies as well as a majority of the jobs in the EU and in Germany. Due to their limited capacities and resources, SMEs encounter certain specific challenges in tendering for public contracts; among those most importantly are large scale tenders, administrative burdens as well as lack of information. Against this background, it certainly comes as no surprise that the promotion of SMEs' participation in public tendering is a longstanding point of concern in public procurement legislation in Germany; enabling SMEs to participate in tendering was the first strategic goal laid down in German public procurement regulations and has gained importance since. The promotion of SMEs and the concern about their ability to participate in tendering, today, is one point of concern of mandatory public procurement regulations. It is regulated at national level by the GWB as well as the statutory decrees VOL/A and VOLB/A, which set further requirements for public tendering.

Given the limited capacities of SMEs and the fact that large scale tenders have been shown to be a major influence on SMEs' abilities to gain public tenders it comes as no surprise that the major point of reference and concern has long since been the size of tenders. Thus, the first requirement set at national level is concerned with allotment: All three national regulations (in focus here) foresee the mandatory requirement to split tenders into partial and technical lots in order to promote SMEs' participation. Procedural requirements to enable SMEs to participate in public tendering thereby form an integral and distinct part of national level regulations. When comparing provision regarding the promotion of SMEs with social criteria in public procurement, it springs to the eye that SMEs are not only one among of set of social and structural economic strategic considerations in public procurement. They are a core issue of public tendering in general: Thus, regulations regarding the participation of SME by far preceded social criteria in public procurement. Furthermore, it seems important to highlight the particularity of regulation the promotion of SMEs in yet another sense: While the promotion of SMEs is not the only criterion making strategic use of public procurement, and other criteria relating to social or ecological goals exist, an important difference is to be stated: While the GWB explicitly mentions the promotion of SMEs and their participation in tendering, and lays down requirements of allotment, regarding all other social and ecological criteria, the GWB only states that social, innovative and ecological criteria can be taken into account if they are linked to the subject matter and specified (§97.4 GWB). Thus, the promotion

of SMEs is the only strategic criterion that is explicitly regulated by Federal law. This can already be taken as an indicator for the high political importance of the criterion. Over and beyond that, the promotion of SMEs (by implementing SME-friendly tendering procedures) is mandatory, which also underlines the importance according to SME-friendly tendering.

Further regulations – set at subnational level and existing in only some Federal States – concern other hindrances that have been pointed out by various studies in the situation of SMEs in public tendering: administrative burdens (by facilitating proof of expert knowledge and competence like in Bavaria or North Rhine-Westphalia), improving accessibility of information (e.g. in Hesse by installing universal, cost-free and comprehensive databases of public tenders and related information). Furthermore, certain Federal States have provisions limiting contracts for general contractors and regulations that aim at securing minimum standards for conditions of subcontracting (equal to those of the contractor). All these criteria (which form the major part of regulations aiming at fostering the participation of SMEs in public procurement) thereby relate to procedural aspects, tackling hindrances encountered by SMEs. This already highlights a second particularity of SME provision: They aim at reducing procedural requirements that result in disadvantages in competition encountered by SMEs and thereby set SME friendly procedural rules. It, hence, is but a few subnational regulations that foresee something vaguely similar to preferential schemes: The provision that general contractors have to treat SMEs preferentially when subcontracting.

However, in recent years, a new conflict of interest arose in public procurement related policies: The GWB includes vague provisions leaving wide discretion for the use of social criteria to the Federal States as legislators. With the increasing political importance of social criteria, more and more Federal States issued public procurement laws that include some kind of social criteria. This ultimately led to an important growth in requirements and an increasing diversification of as well as between Federal states' laws and requirements. As SMEs have limited resources, clarity and universality of criteria in public procurement are important for their participation in tendering. In this context, regional diversification of public procurement regulations may pose challenges to SMEs – especially those that are in spatial proximity to the borders between Federal States. Thus, the recent (and ongoing) diversification of public procurement regulations (with an intense and growing body of relevant legal regulations and possibly, (European) legislation) might counteract attempts to satisfy SMEs' needs of easily accessible public tendering schemes.

In a nutshell, public procurement regulations in Germany see the participation of SMEs as a major point of concern. They promote a broad range of procedural requirements in order to create SME friendly tendering schemes. However, the scattering of legally binding regulations as well as their diversification might pose new challenges to the regulation of public tendering in Germany.

## References

### A. Literature

- Bovis, Christopher (1996): Public Procurement and Small and Medium Sized Enterprises in the United Kingdom and the Republic of Ireland. London: Certified Accountants Educational Trust.
- Bovis, Christopher (1998): The Regulation of Public Procurement as a Key Element of European Economic Law. In: *European Law Journal*, 4:2, 220-242.
- Bundesministerium für Wirtschaft und Technologie (BMWi) (2012): Wie kann § 97 Abs. 3 GWB hinsichtlich der Pflicht zur Aufteilung eines öffentlichen Auftrags in Teillose rechtsicher in die Beschaffungspraxis überführt werden? Studie im Auftrag des Bundesministeriums für Wirtschaft und Energie. Available online: <http://www.bmwi.de/BMWi/Redaktion/PDF/Publikationen/Studien/schlussbericht-rechtssicherheit-teilllose-beschaffungspraxis,property=pdf,bereich=bmwi2012,sprache=de,rwb=true.pdf> [28.7.2014].
- Bundesministerium für Wirtschaft und Technologie (BMWi) (2013): Initiative ‚German Mittelstand‘. Available online: <http://www.bmwi.de/DE/Themen/Aussenwirtschaft/Aussenwirtschaftsfoerderung/Instrumente/german-mittelstand,did=493238.html> [26.3.2013].
- Erridge, Andrew (2007): ‘Public Procurement, Public Value and the Northern Ireland Unemployment Pilot Project’, in: *Public Administration* 85 (4): 1023–1043.
- European Commission (2003): Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (notified under document number C(2003) 1422) (2003/361/EC).
- European Commission (2008a): Commission Staff Working Document. European Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts. (SEC(2008)2193).
- European Commission (2008b): Putting Small Business First. Europe is good for SMEs, SMEs are good for Europe. Available online: [http://ec.europa.eu/enterprise/policies/sme/files/docs/sme\\_pack\\_en\\_2008\\_full\\_en.pdf](http://ec.europa.eu/enterprise/policies/sme/files/docs/sme_pack_en_2008_full_en.pdf) [13.8.2014].
- European Commission (2013): November infringements package: main decisions - MEMO/13/1005, 20/11/2013. Available online: [http://europa.eu/rapid/press-release\\_MEMO-13-1005\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-1005_en.htm) [4.8.2014].
- European Policy Evaluation Consortium (EPEC) (2010): Evaluation of SMEs’ access to public procurement markets in the EU. DG Enterprise and Industry. Final Report. September 2010. Available online: [http://ec.europa.eu/enterprise/policies/sme/business-environment/files/smes\\_access\\_to\\_public\\_procurement\\_final\\_report\\_2010\\_en.pdf](http://ec.europa.eu/enterprise/policies/sme/business-environment/files/smes_access_to_public_procurement_final_report_2010_en.pdf) [13.9.2014].
- Eurostat (2011): Key figures on European business with a special emphasis on SMEs. Luxembourg: Publications Office of the European Union.
- Fee, Ruth/Erridge, Andrew/Hennigan, Sean (2002): SMEs and government purchasing in Northern Ireland: problems and opportunities. In: *European Business Review*, 14:5m, 326-334.
- Fieseler, Jörn/Wallau, Frank (2010): Öffentliches Auftragswesen - Auswirkungen der zentralisierten Bedarfsbündelung des Bundes auf KMU. Institut für Mittelstandsforschung Bonn: IfM-Materialien Nr. 201. Available online: [http://www.ifm-bonn.org/uploads/tx\\_ifmstudies/IfM-Materialien-201\\_2010.pdf](http://www.ifm-bonn.org/uploads/tx_ifmstudies/IfM-Materialien-201_2010.pdf) [8.8.2014].
- IHK Trier (2012): Erfolg mit Öffentlichen Aufträgen. Kooperationsformen für den Mittelstand und Nachtragsmanagement. Available online: [http://www.ihk-trier.de/p/Erfolg\\_mit\\_%C3%96ffentlichen\\_Auftr%C3%A4gen-13-11837.html](http://www.ihk-trier.de/p/Erfolg_mit_%C3%96ffentlichen_Auftr%C3%A4gen-13-11837.html) [30.7.2014].
- Jurčík, Radek (2013): Small and Medium Size Enterprises (SME) and public procurement. In: Lorca, Pedro/Popescu, Catalin (eds.): *Recent Researches in Applied Economics & Management. Business Administration and Financial Management. Volume 1. Proceedings of the 5<sup>th</sup> International Conference on Applied Economics, Business and Development (AEBD '13). Business and Economics Series 9, WSEAS Press, 335-339.*
- Kidalov, Max V./Snider, Keith F. (2011): US and European Public Procurement Policies for Small and Medium-Sized Enterprises (SME): A Comparative Perspective. In: *Business and Politics*, 13: 4, 1-43.

- Krämer, Werner (2003): *Mittelstandsökonomik*. München: Franz Vahlen.
- Loader, Kim (2005): Supporting SMEs through government purchasing activity. In: *International Journal of Entrepreneurship and Innovation*, 6:1, 17-26.
- Loader, Kim (2011) Are public sector procurement models and practices hindering small and medium suppliers? In: *Public Money & Management*, 31:4, 287-294.
- McCrudden, Christopher (2007): *Buying Social Justice. Equality, Government Procurement, & Legal Change*. Oxford: Oxford University Press.
- Morand, Pierre-Henri (2003): SMEs and public procurement policy. In: *Review of Economic Design*, 8:3, 301-318.
- Mühlenkamp, Holger (2003): Zur Förderung der mittelständischen Wirtschaft durch Privatisierungsmaßnahmen und öffentliche Aufträge. In: Bouncken, Ricarda B. (ed.): *Management von KMU und Gründungsunternehmen*. Wiesbaden: Deutscher Universitäts-Verlag, 238-263.
- OECD (2013): *Government at a Glance*. Available online: [http://dx.doi.org/10.1787/gov\\_glance-2013-en](http://dx.doi.org/10.1787/gov_glance-2013-en) [8.8.2014].
- Sarter, Eva Katharina/Sack, Detlef/Fuchs, Sebastian (2014): *Public Procurement as Social Policy? An introduction to social criteria in public procurement in Germany*. Working Paper Series 'Comparative Governance', No. 1, August 2014. Available online: [www.uni-bielefeld.de/soz/powi](http://www.uni-bielefeld.de/soz/powi). Universität Bielefeld.
- Scherrer, Christoph/Hänlein, Andreas/Heigl, Miriam/Hofmann, Claudia (2010): Stärkung von Arbeiterinteressen durch soziale Vergabekriterien im öffentlichen Beschaffungswesen. In: Clement, Ute/Nowak, Jörg/Scherrer, Christoph/Ruß, Sabine (eds.): *Public Governance und Schwache Interessen*, Wiesbaden: VS, 111-126.
- Statistisches Bundesamt (Destatis) (2014a): *Anteile kleiner und mittlerer Unternehmen an ausgewählten Merkmalen 2011*. Available online: <https://www.destatis.de/DE/ZahlenFakten/GesamtwirtschaftUmwelt/UnternehmenHandwerk/KleineMittlereUnternehmenMittelstand/Tabellen/Insgesamt.html#Fussnote1> [23.7.2014].
- Statistisches Bundesamt (Destatis) (2014b): *Kleine und mittlere Unternehmen (KMU)*. Available online: <https://www.destatis.de/DE/ZahlenFakten/GesamtwirtschaftUmwelt/UnternehmenHandwerk/KleineMittlereUnternehmenMittelstand/KMUBegriffserlaeuterung.html> [23.7.2014].
- Vergabeblog (2014): EU-Kommission verklagt Griechenland. *Vergabeblog.de* of 29th July 2014, Nr. 19669. Available online: <http://www.vergabeblog.de/2014-07-29/eu-kommision-verklagt-griechenland/> [1.8.2014].

## B. National legislation

Gesetz gegen Wettbewerbsbeschränkungen (GWB) v. 26.6.2013, idF. v. 21.7.2014	<i>Anti-Trust Law</i>
Verordnung über die Vergabe öffentlicher Aufträge (Vergabeverordnung – VgV) v. 11.2.2003, idF. v. 15.10.2013	<i>Procurement Decree</i>
Vergabe- und Vertragsordnung für Leistungen (VOL) - Teil A - Allgemeine Bestimmungen für die Vergabe von Leistungen (VOL/A) v. 20.11.2009 (Inkrafttreten: 11.6.2010)	<i>Regulations on Contract Awards for Public Supplies and Services (VOL) - Part A General Provisions on Contract Awards for Public Supplies and Services (VOL/A)</i>
Vergabe- und Vertragsordnung für Bauleistungen (VOB)	<i>Regulations on Contract Awards for Construction Works</i>
Vergabeordnung für freiberufliche Dienstleistungen (VOF) v. 18.11.2009 (Inkrafttreten: 11.6.2010)	<i>Regulations on Contract Awards for Services of the Liberal Professions</i>
Gesetz zur Ordnung des Handwerks (Handwerksordnung – HwO) v. 17.9.1953, idF. v. 24.9.1998, zul. geä. 25.7.2013	<i>Federal Crafts Law</i>
Berufsbildungsgesetz (BBiG) v. 23.3.2005, idF. v. 25.7.2013	<i>Vocational Training Law</i>

## C. Subnational legislation and administrative documents

Bavaria	Gesetz über die Förderung der mittelständischen Unternehmen sowie der Freien Berufe (Mittelstandsförderungsgesetz - MfG) v. 20.12.2007, idF. v. 8.4.2013	<i>Law on the promotion of SMEs and the free professions of Bavaria</i>
Baden-Wuerttemberg	Tariftreue und Mindestlohngesetz für öffentliche Aufträge in Baden-Württemberg (Landestariftreue- und Mindestlohngesetz – LTMG) v. 16.4.2013	<i>Procurement law of Baden-Wuerttemberg</i>
	Gesetz zur Mittelstandsförderung [Baden-Württemberg] (Mittelstandsförderungsgesetz – MFG BW) v. 19.12.2000, idF. v. 25.1.2012	<i>Law on the promotion of SMEs of Baden-Wuerttemberg</i>
Berlin	Berliner Ausschreibungs- und Vergabegesetz (Ber-IAVG) v. 8.7.2010, idF. v. 16.6.2012	<i>Procurement law of Berlin</i>
Brandenburg	Brandenburgisches Gesetz über Mindestanforderungen für die Vergabe von öffentlichen Aufträgen (Brandenburgisches Vergabegesetz – BbgVergG) v. 21.9.2011	<i>Procurement law of Brandenburg</i>
	Gesetz zur Förderung des Mittelstandes im Land Brandenburg (Brandenburgisches Mittelstandsförderungsgesetz – BbgMFG) v. 8.5.1992, idF. v. 24.5.2004	<i>Law on the promotion of SMEs of Brandenburg</i>
Bremen	Bremisches Gesetz zur Sicherung von Tariftreue, Sozialstandards und Wettbewerb bei öffentlicher Auftragsvergabe (Tariftreue- und Vergabegesetz – TtVG) idF. v. 24.11.2009, idF. v. 17.7.2012	<i>Procurement law of Bremen</i>
	Bremisches Gesetz zur Förderung von kleinsten, kleinen und mittleren Unternehmen (Mittelstandsförderungsgesetz – BrMFG) v. 28.3.2006, idF. v. 1.3.2011	<i>Law on the promotion of SMEs of Bremen</i>
Hamburg	Hamburgisches Vergabegesetz (HmbVgG) v. 30.4.2013	<i>Procurement law of Hamburg</i>
	Gesetz über die Förderung der kleinen und mittleren Unternehmen und der in der Wirtschaft tätigen freien Berufe (Mittelstandsförderungsgesetz Hamburg - MFG Hamburg) v. 2.3.1977, idF. v. 17.12.2013	<i>Law on the promotion of SMEs and the free professions of Hamburg</i>
Hesse	Hessisches Vergabegesetz (HVgG) [Verkündet als Art. 2 des Gesetzes zur Förderung der mittelständischen Wirtschaft und zur Vergabe öffentlicher Aufträge] v. 25. 3. 2013	<i>Procurement law of Hesse</i>
	Hessisches Mittelstandsförderungsgesetz (HMStFöG) [Verkündet als Art. 1 des Gesetzes zur Förderung der mittelständischen Wirtschaft und zur Vergabe öffentlicher Aufträge] v. 25. 3. 2013	<i>Law on the promotion of SMEs of Hesse</i>

Mecklenburg-Western Pomerania	Gesetz über die Vergabe öffentlicher Aufträge in Mecklenburg-Vorpommern (Vergabegesetz Mecklenburg-Vorpommern – VgG M-V) v. 7.7.2011, idF. v. 25.06.2012	<i>Procurement law of Mecklenburg-Western Pomerania</i>
	Gesetz zur Mittelstandsförderung in Mecklenburg-Vorpommern (Mittelstandsförderungsgesetz - MFG M-V) v. 22.10.2013	<i>Law on the promotion of SMEs of Mecklenburg-Western Pomerania</i>
Lower Saxony	Niedersächsisches Gesetz zur Sicherung von Tariftreue und Wettbewerb bei der Vergabe öffentlicher Aufträge (Niedersächsisches Tariftreue- und Vergabegesetz – NTVergG) v. 31.10.2013	<i>Procurement law of Lower Saxony</i>
	Gesetz zur Förderung kleiner und mittlerer Unternehmen (Mittelstandsförderungsgesetz – MFG NDS) v.30.4.1978, idF. v. 20.11.2001	<i>Law on the promotion of SMEs of Lower Saxony</i>
North Rhine-Westphalia	Gesetz über die Sicherung von Tariftreue und Sozialstandards sowie fairen Wettbewerb bei der Vergabe öffentlicher Aufträge (Tariftreue- und Vergabegesetz Nordrhein-Westfalen - TVgG - NRW) v. 10.01.2012	<i>Procurement law of North Rhine-Westphalia</i>
	Verordnung zur Regelung von Verfahrensanforderungen in den Bereichen umweltfreundliche und energieeffiziente Beschaffung, Berücksichtigung sozialer Kriterien und Frauenförderung sowie Förderung der Vereinbarkeit von Beruf und Familie bei der Anwendung des Tariftreue- und Vergabegesetzes Nordrhein-Westfalen (Verordnung Tariftreue- und Vergabegesetz Nordrhein-Westfalen – RVO TVgG - NRW) v. 8.4.2013	<i>Procurement decree of North Rhine-Westphalia</i>
	Gesetz zur Förderung des Mittelstandes in Nordrhein-Westfalen (Mittelstandsförderungsgesetz – MFG NRW) v. 18.12.2012	<i>Law on the promotion of SMEs of North Rhine-Westphalia</i>
Rheinland-Palatinate	Landesgesetz zur Gewährleistung von Tariftreue und Mindestentgelt bei öffentlichen Auftragsvergaben (Landestariftreuegesetz - LTTG -) v. 1.12.2010	<i>Procurement law of Rheinland-Palatinate</i>
	Mittelstandsförderungsgesetz [Rheinland-Pfalz] (MFG RLP) v. 9.3.2011	<i>Law on the promotion of SMEs of Rheinland-Palatinate</i>
Saarland	Gesetz Nr. 1798 über die Sicherung von Sozialstandards, Tariftreue und Mindestlöhnen bei der Vergabe öffentlicher Aufträge im Saarland (Saarländisches Tariftreuegesetz – STTG) v. 6.2.2013	<i>Procurement law of the Saarland</i>
	Gesetz zur Förderung der kleinen und mittleren Unternehmen sowie der freien Berufe in der Wirtschaft (Mittelstandsförderungsgesetz – MFG SL) v. 21.7.1976, idF. v. 15.2.2006	<i>Law on the promotion of SMEs of the Saarland</i>
Saxony	Gesetz über die Vergabe öffentlicher Aufträge im Freistaat Sachsen (Sächsisches Vergabegesetz – Sächs-VergabeG) v. 14.2.2013	<i>Procurement law of Saxony</i>
Saxony-Anhalt	Gesetz über die Vergabe öffentlicher Aufträge in Sachsen-Anhalt (Landesvergabegesetz - LVG LSA) v. 19.11.2012, idF. v. 30.7.2013	<i>Procurement law of Saxony-Anhalt</i>
	Mittelstandsförderungsgesetz [Sachsen-Anhalt] (MFG LSA) v. 27.6.2001, idF. v. 19.11.2012	<i>Law on the promotion of SMEs of Saxony-Anhalt</i>
Schleswig-Holstein	Gesetz über die Sicherung von Tarif treue und Sozialstandards sowie fairen Wettbewerb bei der Vergabe öffentlicher Aufträge (Tariftreue- und Vergabegesetz Schleswig-Holstein - TTG) v. 31.5.2013	<i>Procurement law of Schleswig-Holstein</i>
	Gesetz zur Förderung des Mittelstandes (Mittelstandsförderungsgesetz – MFG SH) v. 19.7.2011, idF. v. 31. 5. 2013	<i>Law on the promotion of SMEs of Schleswig-Holstein</i>
Thuringia	Thüringer Gesetz über die Vergabe öffentlicher Aufträge (Thüringer Vergabegesetz - ThürVgG-) idF. v. 18.4.2011	<i>Procurement law of Thuringia</i>
	Thüringer Gesetz zur Förderung und Stärkung kleiner und mittlerer Unternehmen und der Freien Berufe (Thüringer Mittelstandsförderungsgesetz – MFG TH) v. 18.4.2011	<i>Law on the promotion of SMEs of Thuringia</i>