Special contract conditions
regarding inspections and sanctions pursuant to the Berlin Tendering
and Awarding Act (BerlAVG)

Section B of the
special contract conditions
regarding
minimum hourly rates of pay (Wirt-214),
compliance with ILO core labor standards (Wirt-2140),
the advancement of women (Wirt-2141), and measures
prevention of disadvantages (2143)

1. Inspections

1.1 Scope of inspections

The contracting authority and the contractor agree that compliance with the following contractual conditions, if 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 staff deployed for the performance of the contract according to those remuneration regulations, including minimum remuneration, which are specified as binding for the service in question under the Minimum Wages Act, a collective agreement declared to be generally binding under the Collective Agreement Act with the effects of the Law on the Posting of Workers, (or) a statutory ordinance issued in accordance with Section 7, Section 7a or Section 11 of the Law on the Posting of Workers or a statutory ordinance issued in accordance with Section 3a of the Law on the Provision of Temporary Workers (see Wirt-214, point 1.1.1);

1.1.2 Payment of a minimum hourly rate to staff deployed for the performance of the contract (excluding trainees) at the agreed rate of pay (see Wirt-214, number 1.1.2);

1.1.3 Transfer of the undertaking to pay stated minimum hourly rates to subcontractors and agencies supplying staff and ensuring this undertaking is enforced throughout the subcontracting chain (see Wirt-214, number 2);

1.1.4 Measures for compliance with ILO core labor standards (see Wirt-2140);
1.1.5 Measures for the advancement of women and/or the advancement of the compatibility of work and family, including the transfer of undertakings to subcontractors (see Wirt-2141).

The contractor undertakes to ensure the compliance of its subcontractors regarding undertakings subject to inspection as well as the transfer of this undertaking to any subcontractors.

1.2 Inspection process

1.2.1 The contracting authority or the central inspection body of the state of Berlin carries out an inspection of compliance with the contract conditions listed under 1.1. by requesting the requisite documents for inspection or by inspecting the documents in the contractor’s or subcontractor’s premises.

1.2.2 The contractor or sub-contractor is obliged to cooperate in this process by presenting the documents required in full and in inspectable condition for the purposes of ascertaining if the agreed contract conditions in point 1.1 are complied with.

1.2.3 Inspections are conducted with the cooperation of the contractor or subcontractor. 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 days.

1.3 Documents required for inspection

The complete and inspectable documentation required for inspecting compliance with the various undertakings is usually as follows:

1.3.1 Payment of remuneration in accordance with a binding collective agreement:
   - Employment contracts
   - Payroll slips
   - Monthly hourly time sheets or other proof of hours worked
   - Documents proving salary scale/remuneration group
   - Relevant collective agreements;

1.3.2 Payment of a minimum hourly wage under public procurement law:
   - Employment contracts
   - Payroll slips
   - Monthly hourly time sheets or other proof of hours worked;

1.3.3 The further compliance of the entire subcontracting chain:
   - Contractual undertaking under public procurement law by the subcontractor or agency supplying staff and the entire subcontracting chain regarding the undertakings to be inspected;

1.3.4 ILO labor standards:
• Certificates/quality marks
• Certificates of origin
• Delivery notes or other equivalent proof
• Other documents required for a full inspection, such as documents showing quantities delivered, production quantities;

1.3.5 Measures for the advancement of women/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

1.4 Data Protection

During the inspection and documentation process, any possible business secrets are protected. Similarly, personal data will be only be processed for the purposes of inspection and will only be made available to the staff of the public awarding 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 of the contractor or subcontractor for the purposes of the inspection

The contractor or subcontractor is obliged to cooperate throughout the inspection (see also 1.2). In addition to the preparation and submission of the documents referred to in point 1.3, this also requires the contractor or subcontractor to comply with all data protection requirements for the processing of personal data of staff deployed for the performance of the contract, in particular by informing such staff 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 contractor and the central inspection body in their work. The contractor undertakes to pay all costs arising 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 on the part of the latter of the contractual conditions referred to in points 1.1.1. to 1.1.5, assuming these have been agreed. This also applies to an infringement of special contract conditions regarding the prevention of disadvantages (Wirt-2143) as well as any infringement of the obligation to cooperate in the inspection process pursuant to point 1.2. Possible sanctions include penalties for breach of contract, termination of contract or withdrawal from the contract, as well as compensation or price reduction in accordance with the following provisions.
2.2 Penalty for breach of contract

2.2.1 The contracting authority and contractor agree a penalty for breach of contract of 1 percent of the value of the contract for all culpable infringements referred to in point 2.2.2 of all special contract conditions as stated in 2.1. Exempted here are infringements of the agreements regarding payment pursuant to 2.1 read in conjunction with point 1.1.1 (Wirt-214, point 1.1.1) as well as infringements of special contract conditions regarding the prevention of disadvantages pursuant to point 2.1 (Wirt-2143).

2.2.2 An infringement also occurs

2.2.2.1 If the minimum hourly rate of pay in accordance with procurement law has not been paid in the agreed amount to staff deployed for the performance of the contract (Wirt-214 point 1.1.2). This applies to all staff for each contractual period;

2.2.2.2 If none of the listed certificates are provided at the latest upon delivery for the sensitive products listed in the agreed special contract conditions regarding compliance with ILO core labor standards. This applies per sensitive product per partial delivery;

2.2.2.3 If, contrary to the agreed special contract condition 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 have not been demonstrably implemented or initiated. This applies for each measure for each contractual period;

2.2.2.4 In the event of an infringement of the undertaking to transfer the obligation to pay specific minimum hourly rates to subcontractors and agencies supplying staff and ensure this undertaking is agreed throughout the subcontracting chain (Wirt-214, point 2.). This also applies to the undertaking by subcontractors pursuant to the special contract conditions regarding the advancement of women (Wirt-2141).

2.2.2.5 If, contrary to the obligation pursuant to point 1.2., the contractor or subcontractor fails to cooperate with the inspection to ascertain compliance with the contractual conditions in point 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 in the premises of the contractor or subcontractor.

2.2.3 The contractor is also obliged to pay a penalty if a culpable infringement is committed by one of its subcontractors or agencies providing staff 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 A contractual penalty may not exceed a total of 5 percent of the value of the contract. A contractual penalty forfeited on the basis of further contractual conditions shall be set off against this maximum contractual penalty of 5 percent; unless otherwise agreed, contractual penalties forfeited here shall also be set off against the maximum amount of contractual penalties forfeited on the basis of further contractual conditions.

2.2.6 In addition, Sections 339 ff BGB apply.

2.3 Termination; withdrawal

2.3.1 In the event of an infringement of the agreed contract conditions listed in point 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 in point 2.2.2 regarding contractual penalties are examples of reasons entitling the exercise of claims under point 2.3.1.

2.4 Reduction of price; compensation

2.4.1 In the event of an infringement of the agreed contractual conditions listed in point 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 remuneration agreements pursuant to point 2.1 read in conjunction with point 1.1.1 (Wirt-214, point 1.1.1) as well as measures for preventing disadvantages pursuant to point 2.1 (Wirt-2143).

2.4.2 The infringements listed in point 2.2.2 regarding contractual penalties are examples of reasons entitling the exercise of claims under point 2.4.1.

Note

If the contractor or one its subcontractors or agencies supplying staff infringes the contract conditions in points 1.1 and 2.1, the public contracting authority or the central inspection body shall without delay inform the Official Company and Supplier Directory of the Berlin Senate Administration for Urban Development (Section 16 (5) BerlAVG). In addition, the financial inspection of illegal work unit 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 Law Against Restraints of Competition (GWB) (Section 16 (6) BerlAVG).