

General Auxiliary Conditions for Allocations for the Promotion of Projects (AN Best-P)

Last updated
in 2014

The General Auxiliary Conditions for Allocations for the Promotion of Projects (AN Best-P) contain auxiliary conditions within the meaning of Article § 36 of the Administrative Procedure Act (Verwaltungsverfahrensgesetz, VwVfG) as well as necessary explanations. The Auxiliary Conditions form part of the allocation decision, provided that nothing to the contrary is expressly stipulated.

Contents

- No. 1 Request and use of the allocation
- No. 2 Subsequent reduction of the expenditure or amendment of the financing
- No. 3 Awarding contracts
- No. 4 Items procured to fulfil the intended purpose of the allocation
- No. 5 Notification obligations of the allocation recipient
- No. 6 Proof of employment of funds
- No. 7 Inspection of use
- No. 8 Reimbursement of allocations, interest

1. Request and use of the allocation

- 1.1 The allocation must be used economically and prudently.
- 1.2 All revenues related to the intended purpose of the allocation (particularly allocations and contributions provided by third parties) and the recipient's own contribution must be used as resources to fund all expenditure incurred by the allocation's intended purpose. The financing plan shall be binding as far as the overall results are concerned. Individual estimates may be exceeded by up to 20 per cent, provided that the overrun can be compensated by corresponding savings on other estimates. In the event that the exceeding of an individual estimate is the result of regulatory requirements or obligations, particularly within the context of construction regulations, further deviations to the overall results of the financing plan shall be permitted. Sentences 2 to 4 shall not apply in the event of a fixed-rate funding programme.
- 1.3 In the event that the allocation may be used for the purposes of personnel expenditure or administrative expenses, and if the recipient's overall expenditure is financed chiefly by government allocations, the recipient may not remunerate its employees in a manner which is financially more lucrative than comparable federal employees. Salaries higher than those stipulated by the wage agreement for the public service sector (Tarifvertrag für den öffentlichen Dienst, TVöD), in addition to other payments above or unrelated to the general pay scale may not be paid.
- 1.4 As a rule, allocations shall be provided by way of a request procedure. In these cases, the regulations stipulated in the Special Auxiliary Conditions for the Request for Allocations (BNBest-Abruf) shall apply.
In the event that no request procedure is implemented, the allocations shall be provided as follows: the allocation may only be requested insofar as it is required immediately to meet outstanding payments, and not before. Requests relating to partial amounts must contain the information necessary to assess the funding requirements. Additionally, the allocation may be used as follows:
 - 1.4.1 for partial or fixed-rate funding, on a proportionate basis, in addition to possible allocations from other awarding authorities and the intended personal and external resources of the recipient,
 - 1.4.2 to make up financial shortfalls in the event that the intended internal and external resources of the recipient have been exhausted.

If a financial shortfall (No. 1.4.2) is funded proportionately by several awarding authorities, the allocation may only be requested proportionately to those provided by the latter.

- 1.5 Payments prior to the receipt of the counter-performance may only be agreed or effected in the event that this is customary or justified by specific circumstances.
- 1.6 The approving agency reserves the right to revoke the allocation decision with future effect in the event that it becomes apparent that the intended purpose of the allocation will not be achieved.

2. Subsequent reduction of the expenditure or amendment of the financing

- 2.1 Should the overall expenditure for the intended purpose of the allocation estimated in the financing plan decrease in the wake of the latter's approval, or if external resources increase or additional resources are obtained (e.g. investment grants), the allocation shall be reduced in consequence
 - 2.1.1 for partial funding, on a proportionate basis, in addition to possible allocations from other awarding authorities and the intended personal and external resources of the recipient,
 - 2.1.2 for financial shortfall and full funding, by the entire amount in question.
- 2.2.1 No. 2.1 shall only apply (with the exception of full funding and recurring funding of the same allocation purpose) in the event that the overall expenditure or additional resources alter by more than a total of 500 EUR.

3. Awarding contracts

- 3.1 If the allocation or, in the case of funding via several agencies, the overall amount of the allocation exceeds 100,000 EUR, the following shall apply:
 - in the event of the awarding of construction service contracts, Section 1 of Part A of the Award and Contract Procedure for Construction Services (Vergabe- und Vertragsordnung für Bauleistungen, VOB/A),
 - in the event of the awarding of public supplies and services, Section 1 of Part A of the Award and Contract Procedure for Public Supplies and Services (Vergabe- und Vertragsordnung für Leistungen, VOL/A).
- 3.2 The obligations of the recipient as a public contracting authority in accordance with Article 98 of the Act against Restraints of Competition (Gesetzes gegen Wettbewerbsbeschränkungen , GWB)
 - on the basis of the German Ordinance on the Award of Public Contracts (VgV), Section 2, Part A of the VOB (VOB/A-EG), Section 2, Part A of the VOL (VOL/A-EG) or the German Ordinance on the Awarding of Contracts for Freelance Services (VOF) or
 - on the basis of the Sector Ordinance (SektVO) or the German Ordinance on the Award of Public Contracts in the fields of Defence and Security (VSVgV) or
 - on the basis of other awarding regulations shall remain unaffected.

4. Items procured to fulfil the intended purpose of the allocation

- 4.1 Items procured or produced in order to fulfil the intended purpose of the allocation must be used for said purpose and treated with due care. The recipient may not use these for other purposes prior to the expiry of the fixed term stipulated in the allocation decision.
- 4.2 The recipient shall be obliged to create an inventory of items with a procurement or production value of more than 410 EUR (excluding turnover tax). In the event that the Federal Government is or will become the owner for particular reasons, the corresponding items must be marked in the inventory accordingly.

5. Notification obligations of the allocation recipient

The recipient shall be obliged to inform the approving agency immediately if

- 5.1 it applies for, or receives, additional allocations for the same purpose from other public authorities, or if it receives (additional) funds from third parties after the submission of the financing plan or in the wake of the submission of the proof of employment of funds,
- 5.2 the intended purpose of the allocation or other circumstances crucial to the allocation's approval alter or cease to exist,
- 5.3 it transpires that the intended purpose of the allocation cannot be achieved, either with the approved allocation or per se,
- 5.4 the requested or paid amounts cannot be used immediately to meet outstanding payments,
- 5.5 items to be included in the inventory cannot be used within the fixed term in accordance with the intended purpose of the allocation, or are no longer required,
- 5.6 insolvency proceedings are applied for or initiated concerning its assets.

6. Proof of employment of funds

- 6.1 The approving agency must be provided with proof regarding the employment of the allocation within six months of the fulfilment of the intended purpose of the allocation, and, at the latest, upon the expiry of the sixth month following the period of entitlement (proof of employment of funds). In the event that the intended purpose of the allocation has not been fulfilled by the end of the fiscal year, an interim report concerning the amounts received during said year must be presented within four months of the end of the same. Substantive reports as part of an interim report in accordance with No. 6.3 may be linked to the next report due in the event that the reporting period for a fiscal year does not exceed three months.
- 6.2 The proof of employment of funds constitutes a substantive report and a statement of accounts.
 - 6.2.1 The use of the allocation and details of the results obtained must be contrasted with the defined objectives in the substantive report. The substantive report should describe the main items in the statement of accounts. Furthermore, the necessity and appropriateness of the work performed should be explained.
 - 6.2.2 The statement of accounts must include the revenues and expenditure listed separately and in chronological order, this in accordance with the structure of the financing plan. The statement must include all revenues related to the intended purpose of the allocation (allocations, third-party contributions, internal resources) and expenditure. The statement must be accompanied by a tabular overview of receipts, in which the expenditures are listed chronologically and separately according to type (list of receipts). The day, recipient/payer, grounds and individual amount of each payment must be evident from the list of receipts. Insofar as the recipient qualifies for input tax deduction in accordance with Article 15 of the German Turnover Tax Law, only payments (prices less turnover tax) may be considered. The proof of employment of funds must contain the confirmation that the expenditure was necessary, that its use was economical and prudent, and that the information corresponds with the accounts and, as necessary, the receipts.
- 6.3 The interim report (No. 6.1, Sentence 2) consists of the substantive report and a statement of accounts (without a list of receipts in accordance with No. 6.2.2, Sentence 3), in which revenues and expenditure must be listed in a summary manner in accordance with the structure of the financing plan.
- 6.4 The receipts must contain the information and enclosures customary to business transactions, in the case of expenditure receipts with particular reference to the payment recipient, grounds for and day of payment, proof of payment and, in the case of items, the intended purpose. The receipts should also contain a clear attribution reference to the project (e.g. project number).

- 6.5 The recipient shall be obliged to retain the original receipts (revenue and expenditure receipts) relating to the individual payments and the contracts awarded, as well as to all other documentation relating to the funding (cf. No. 7, Sentence 1) for five years after submission of the proof of employment of funds, unless a longer retention period is stipulated in accordance with tax law or other provisions. Image or data carriers may also be used for retention purposes. The recording and replication procedure must comply with the principles of correct accounting or a generally applicable regulation in use within the field of public administration.
- 6.6 In the event that the recipient is permitted to pass on funds to third parties in order to fulfil the intended purpose of the allocation, the proof of employment of funds and interim reports provided to the former by the receiving agency must be attached to the proof of employment of funds and interim reports submitted by the recipient in accordance with No. 6.1.

7. Inspection of use

- 7.1 The approving agency shall be entitled to request accounts, receipts and other business documentation and to corroborate the allocation's use via spot checks, or have this corroborated by authorised representatives. The recipient shall be obliged to submit the required documents for auditing and to provide the necessary information. In the event of No. 6.6, the approving agency shall also be entitled to apply these rights to any third parties involved.
- 7.2 In the event that the recipient employs its own auditor, the latter shall be obliged to audit the proof of employment of funds prior to its submission, and certify the same, attaching its results in the process.
- 7.3 The Federal Audit Office (BRH) shall be entitled to audit recipients (Articles 91 and 100 of the Federal Budget Code (BHO)).

8. Reimbursement of allocations, interest

- 8.1 The allocation must be reimbursed in the event that an allocation decision is withdrawn or revoked or otherwise becomes ineffective in accordance with the Administrative Procedure Act (particularly Articles 48 and 49 VwVfG) or other legal regulations with retroactive effect.
- 8.2 No. 8.1 shall apply particularly in the event that
- 8.2.1 the allocation has been procured as a result of incorrect or incomplete statements,
- 8.2.2 the allocation is not, or no longer employed for the intended purpose,
- 8.2.3 a condition subsequent has occurred (e.g. subsequent reduction of the expenditure or amendment of the financing in accordance with No. 2).
- 8.3 A retroactive revocation may also occur in the event that the recipient
- 8.3.1 fails to use the allocation immediately after payment to fulfil the intended purpose of the allocation or
- 8.3.2 fails to fulfil obligations either entirely or within a set deadline, particularly as regards the timely submission of the stipulated proof of employment of funds and compliance with notification obligations (No. 5).
- 8.4 Interest at a rate of five percentage points above the respective base rate according to Article 247 of the German Civil Code (BGB) must be paid on the reimbursement amount on an annual basis in accordance with Article 49a, Para. 3 VwVfG.
- 8.5 In the event that allocations are not used to fulfil the intended purpose of the allocation immediately after payment, and if the allocation decision is not withdrawn or revoked, annual interest at a rate of five percentage points above the respective base rate according to Article 247 of the German Civil Code (BGB) may also be charged for the period between payment and appropriate use of the allocations; the same shall apply if funds are utilised although other resources should be employed, either proportionately or as a priority (Article 49a, Para. 4 VwVfG). Within the context of the request procedure, 'the immediate use of the funds' shall be defined as their use to meet outstanding payments within six weeks of receipt.