

# **Legal Protection in Germany**

Dr. Amalie Weidner

German Ministry of Economics and  
Labour

# Development of Legal Protection I

- Until 1998: Public Procurement Review Offices (Vergabeprüfstellen)  
⇒ internal supervisory bodies which initiate proceedings upon application or ex officio
- Introduction of enforceable legal protection in 1999: insertion of rules on review proceedings in the Act against Restrictions of Competition (GWB)

# Development of Legal Protection II

- Significant change in 2001 (as a reaction to the decision „Alcatel“):  
Introduction of the obligation to provide advance information

# Two-Tier System of Legal Protection

## First Instance: Procurement Tribunals

(Vergabekammern)

= independent and specialized administrative organs

- Federal Cartel Office (for federal tenders)
- Procurement Tribunal of the Länder (Regions) (for tenders of the regional and local authorities)

## Second instance: Higher Regional Courts

(Oberlandesgerichte)

# General Aspects of Legal Protection

Remedies must be **effective** and **rapid**:

⇒ Automatic suspensive effect

⇒ Short time limits

⇒ Requirement to provide prior information

# Automatic Suspensive Effect I

⇒ Suspension of award procedure

- Contracting authority cannot award the contract.
- Suspensive effect is upheld until the decision of the procurement tribunal has been taken and the period for appeal has expired.

# Automatic Suspensive Effect II

- In urgent cases and under certain circumstances the procurement tribunal may allow the contracting authority to award the contract earlier.

# Time Limits I

- Procurement tribunal has to come to a decision within 5 weeks.
- Period to appeal against this decision is two weeks.



# Time Limits II

- In case of an appeal, the suspensive effect expires normally after further two weeks.

Under certain circumstances it can be restored until the decision of the Court has been taken.

# Requirement to Provide Prior Information

- Inadmissibility of the application if during the award procedure the complainant had become aware of a violation of procurement rules but has failed to object to the contracting authority
- Avoiding unnecessary legal proceedings
- A tenderer shall not be able to speculate that the infringement of rules might be in his favour.

# Advance Information I

- Introduced in 2001
- Reaction on the decision of the Court of Justice in the case Alcatel (C-81/98)

# Advance Information II

- The contracting authority is obliged to inform tenderers whose bids are to be rejected of the name of the successful tenderer and the reason for the proposed rejection of the bids.
- The information enables tenderers who claim an infringement of their rights to seek a review within a period of 14 days.

# Advance Information II

- The contract may only be concluded after this 14 days period. If it is concluded earlier or if the contracting authority fails to inform the other tenderers, the contract is void.
- An isolated challenge of the award is not possible.

# **Results of a Questionnaire on Legal Protection I**

In 2003 the Government submitted a report to the Parliament about the experiences with the new provisions on legal protection.

The report was based on a questionnaire sent to contracting authorities, companies, business associations etc.

# Results of a Questionnaire on Legal Protection II

- Current system of legal protection has proved well.
- Some legal uncertainties, e.g. with regard to the so called de-facto-procurement (procurement without any procurement procedure).

**Thank you for your attention.**