

## **Appendix 2 to the Administrative Regulation No. 5.1 in accordance with section 44 of the German Federal Budget Code (BHO)**

### **General ancillary provisions for grants for project funding (ANBest-P)**

The ANBest-P contains additional provisions within the meaning of section 36 of the German Administrative Procedure Act (VwVfG), accompanied by necessary explanations. These additional provisions are an integral part of the awarding of the grant, unless expressly stated otherwise.

#### **Contents**

- No. 1 Request and use of the grant
- No. 2 Subsequent reduction of expenses or changes to financing
- No. 3 Awarding of contracts
- No. 4 The fulfilment of the purpose of the grant
- No. 5 Notification obligations of the beneficiary
- No. 6 Proof of use
- No. 7 Verification of use
- No. 8 Repayment of the grant, interest

#### **1. Request and use of the grant**

- 1.1 The grant is used economically and sparingly.
- 1.2 All income related to the purpose of the grant (in particular grants, third-party services) and the recipient's own contribution must be used to cover all expenditure related to the purpose of the grant. The financial plan is binding with regard to the overall result. The individual budgets may be exceeded by up to 20 per cent, provided that the excess can be offset by corresponding savings in other individual budgets. If the exceeding of an individual budget is based on official conditions or requirements, in particular within the framework of the procedure under building law, further deviations are also permissible within the overall result of the financial plan. Sentences 2 to 4 do not apply to fixed-amount financing.
- 1.3 If the grant is also intended to cover personnel expenses or material administrative expenses, and if the total expenses of the beneficiary are predominantly covered by government grants, the beneficiary may not place its employees in a better position than comparable federal employees. Higher salaries than those stipulated in the collective agreement for the public service TVÖD (standards of collective official wage agreements) as well as other benefits above or outside the collective agreement may not be granted.
- 1.4 As a rule, the grants are provided by way of the call procedure. In these cases, the regulations of the German Federal Government's Special Auxiliary Terms and Conditions for the calling off of Grants (BNBest call-off) apply. If participation in the call procedure does not take place, the grants shall be made available as follows: The grant may only be claimed insofar and not earlier than it is required for payments due soon after disbursement. The request for each partial amount must contain the information necessary to assess the need for funds. In addition, the grant may be claimed as follows:
  - 1.4.1 If the project is financed on a pro rata or fixed-amount basis, any grants from other funding bodies and the beneficiary's own funds and other funds of the beneficiary are taken into account,
  - 1.4.2 in the case of shortfall financing, if the intended own and other funds of the beneficiary are used up. If a shortfall that needs to be covered (No. 1.4.2)

is financed proportionately by several funding bodies, the grant may only be requested proportionately with the grants from the other funding bodies.

- 1.5 Payments before receipt of the reward may only be agreed or made if this is generally customary or justified by special circumstances.
- 1.6 The granting authority reserves the right to revoke the funding decision with future effect if it becomes apparent that the purpose of the funding cannot be achieved.

## **2. Subsequent reduction of expenditure or change in financing**

- 2.1 If the total expenditure for the purpose of the grant estimated in the financial plan is reduced after the grant has been approved, if the cover funds are increased or if new cover funds (e.g. investments) are added,
  - 2.1.1 the grant shall be reduced, in the case of pro rata funding, proportionately with any grants from other funding bodies and the intended own and other funds of the beneficiary,
  - 2.1.2 in the case of lack of funding and full funding, by the full eligible amount.
- 2.2 No. 2.1 shall only apply (except in the case of full funding and in the case of recurring funding for the same purpose) if the total expenditure or the cover funds change by more than 500 euros in total.

## **3. Awarding of contracts**

- 3.1 If the grant or, in the case of funding by several bodies, the total amount of the grant is more than 100,000 euros, the following regulations must be applied when awarding contracts:
  - for the award of supply and service contracts, the Rules of Procedure for the Award of Public Supply and Service Contracts below the EU Threshold Values (Sub-Threshold Award Regulation - UVgO). The obligation regarding application does not apply to the following provisions:
    - Section 22 for division by lots,
    - Section 28 (1) sentence 3 for the publication of contract notices,
    - Section 30 for the contract award notice,
    - Section 38 paragraphs 2 - 4 on the form and transmission of requests to participate and tenders,
    - Section 44 for abnormally low tenders,
    - Section 46 for informing candidates and tenders
  - for the commissioning of construction works Part A Section 1 of the German Construction Contract Procedures (Vergabe- und Vertragsordnung für Bauleistungen - VOB/A).
- 3.2 The obligations of the beneficiary as a client in accordance with Part 4 of the German Act Against Restrictions on Competition (GWB) remain unaffected.

**4. The following items are required to fulfil the purpose of the grant**

- 4.1 Items that are purchased or manufactured to fulfil the purpose of the grant must be used and handled carefully for the purpose of the grant. The beneficiary may not dispose of them in any other way before expiry of the time limit specified in the funding decision.
- 4.2 The beneficiary must take an inventory of the items acquired to fulfil the purpose of the grant if its acquisition or production value exceeds 410 euros (excluding value-added tax). If, for exceptional reasons, the Federal Government is or becomes the owner, the objects shall be specially marked in the inventory.

**5. Notification obligations of the beneficiary**

The beneficiary is obligated to notify the granting authority immediately if,

- 5.1 after submitting the financial plan and after submitting the proof of use, they apply for or receive further grants for the same purpose from other public authorities, or if they receive (if necessary) further funds from third parties,
- 5.2 the purpose of use or other circumstances relevant to the approval of the grant change or cease to apply,
- 5.3 if it turns out that the purpose of the grant cannot be achieved or cannot be achieved with the approved grant,
- 5.4 the amounts requested or paid out cannot be used for any payments that are due immediately after they have been made,
- 5.5 objects to be inventoried are no longer used in accordance with the purpose of the grant or are no longer required within the time limit,
- 5.6 insolvency proceedings are applied for or opened against its assets.

**6. Proof of use**

- 6.1 Proof of use of the grant must be provided to the granting authority within six months of the fulfilment of the purpose of the grant, but no later than the end of the sixth month following the grant period (Proof of use). If the purpose of the grant is not fulfilled by the end of the financial year, an interim statement must be kept within four months after the end of the financial year on the amounts received in that year. Factual reports as part of an interim report in accordance with No. 6.3 may be combined with the next due factual report if the reporting period for a financial year does not exceed three months.
- 6.2 The proof of use consists of a factual report as well as numerical proof.
  - 6.2.1 In the factual report, the use of the grant as well as its achieved result must be presented in detail and compared to the specified goals. The factual report should address the most important items of the numerical evidence. Furthermore, it is also necessary to explain the appropriateness of the work performed.
  - 6.2.2 In the numerical proof, the income and expenses shall be shown in chronological order and separately from each other in accordance with the structure of the financial plan.

The proof must contain all income related to the purpose of the grant (allocation of funds, services of third parties, own funds) and expenses. The proof must be accompanied by a tabular document overview in which the expenses are listed separately by type in chronological order (document list). The document list must show the date, recipient/depositor as well as the reason and the individual amount of each payment. The beneficiary has the possibility to deduct input tax according to Section 15 of the German Value Added Tax Act (Umsatzsteuergesetz), only the fees (prices without value added tax) may be taken into account. The proof of use must confirm that the expenditure was necessary, that economic and sparing use has been made and that the details correspond to the books and, if applicable, the receipts.

- 6.3 The interim report (No. 6.1, sentence 2) consists of the factual report and a numerical report (without a list of documents according to No. 6.2.2, sentence 3), in which income and expenditure are to be summarised according to the structure of the financial plan.
- 6.4 Receipts must contain the information and attachments which are customary in business transactions; receipts for expenditure must in particular contain the payee, reason and date of payment, proof of payment and, in the case of objects, the purpose of use. The receipts must also contain a unique identifier for the project (e.g. project number).
- 6.5 The beneficiary must keep the original receipts (income and expenditure documents) for the individual payments and the contracts for the award of contracts as well as all other documents related to the funding (cf. No. 7.1 sentence 1) for five years after submission of the proof of use, unless a longer retention period is stipulated under tax law or other regulations. Image or data storage media can also be used for storage. The methods of recording and reproduction shall be in accordance with generally accepted accounting principles or with a system generally accepted in public administration.
- 6.6 If the beneficiary is permitted to pass on funds to third parties in order to fulfil the purpose of the grant, the proof of use and interim proofs of use to be provided to the beneficiary by the receiving bodies must be attached to the proof of use or interim proof according to No. 6.1.

## **7. Verification of use**

- 7.1 The granting authority is entitled to request books, receipts and other business documents as well as to check the use of the grant by local surveys or to have it checked by a representative. The beneficiary must have the necessary documents ready to provide the necessary information. In the cases of No. 6.6, these rights of the granting authority shall also be stipulated vis-à-vis the third party.
- 7.2 If the beneficiary has its own auditing department, the latter shall audit the proof of use in advance and certify the audit, stating its findings.
- 7.3 The Federal Audit Office is entitled to audit with the beneficiary (under sections 91 and 100 of the BHO).

## **8. Repayment of the grant, interest**

- 8.1 The grant must be reimbursed if a notice of grant is withdrawn or revoked with effect for the past or otherwise becomes invalid under administrative procedural law (in particular Sections 48, 49 VwVfG) or other legal provisions.
- 8.2 No. 8.1 specifically applies if
  - 8.2.1 the grant was obtained through incorrect or incomplete information,

- 8.2.2 the funding is not or no longer used for its intended purpose,
- 8.2.3 a resolatory condition has occurred (e.g. subsequent reduction of expenditure or change in financing according to No. 2).
- 8.3 Withdrawal with retrospective effect may also be considered if the beneficiary
  - 8.3.1 does not use the grant to fulfil the purpose of the grant as soon as it has been paid, or
  - 8.3.2 does not fulfil conditions or does not fulfil them within a set period of time, in particular does not submit the prescribed proof of use in due time and does not comply with notification obligations (No. 5) in due time.
- 8.4 The repayable amount shall be in accordance with section 49a (3) of the German Administrative Procedure Act (VwVfG).
- 8.5 If grants are not used to fulfil the purpose of the grant immediately after payment and if the notice of grant is not withdrawn or revoked, interest of five percentage points above the base interest rate pursuant to section 247 of the German Civil Code (BGB) may also be demanded annually for the period from payment until the grant is used for the purpose intended; the same applies if a benefit is claimed although other funds are to be used proportionately or with priority (section 49a (4) of the Administrative Procedure Act (VwVfG)). If the funds are used for payments due more than six weeks after disbursement, this does not constitute an immediate use of the funds in the request procedure.