
FRAMEWORK AGREEMENT

on the provision of consulting services by

- PD-Berater der öffentlichen Hand GmbH -
(“Partnerschaft Deutschland”)

by way of an in-house contract award

December 2016

**Framework Agreement
on the provision of consulting services**

between

the shareholders of

PD – Berater der öffentlichen Hand GmbH

- each individually or collectively referred to hereinafter as the “Contracting Entities” –

and

der

PD – Berater der öffentlichen Hand GmbH

(“Partnerschaft Deutschland”)

Alexanderstrasse 3

10178 Berlin, Germany

represented by its managing directors

- referred to hereinafter as the “Contractor” or the “Company” -

- the Contracting Entities and the Contractor each individually referred to hereinafter as the
“Party” and collectively as the “Parties” -

Table of contents

Preamble.....	4
Section 1 Parties to the Framework Agreement and to the individual contracts	4
Section 2 Object of the Framework Agreement	5

Section 3 Basis of the Framework Agreement and the individual contracts to be awarded on the basis thereof	5
Section 4 Cooperation requirements	6
Section 5 Obligations of the Contractor	7
Section 7 Remuneration	7
Section 8 Consulting services by third parties	10
Section 9 Impairment of performance	11
Section 10 Liability	11
Section 11 Intellectual property, rights of use	12
Section 12 Exclusion of liability	12
Section 13 Set-off and rights of retention	12
Section 14 Duration and adjustment of remuneration rates ..	12
Section 15 Termination	13
Section 16 Conflicts of interests	14
Section 17 Data protection	14
Section 18 Place of performance	15
Section 19 Confidentiality	15
Section 20 Monitoring	15
Section 21 Transferability	16
Section 22 Contractual costs	16
Section 23 Severability clause	16
Section 24 Final and transitional provisions	17

Preamble

The consulting company PD – Berater der öffentlichen Hand GmbH (“Partnerschaft Deutschland”) offers its direct and indirect shareholders, which are all public contracting entities in accordance with section 99 of the Act against Restraints of Competition (hereinafter: “Contracting Entities”), investment and modernisation-related consulting services covering all forms of implementation as well as all associated transactions and services needed in order to achieve public investment and modernisation objectives as cost-effectively as possible.

In this context, a focal point is a range of consulting services for public investment projects for the Federation, the *Länder* and local authorities relating to all forms of procurement and covering the entire project cycle. With regard to the consulting services, the performance of economic feasibility studies, alternative comparisons, suitability and feasibility analyses as well as strategic and organisational consulting for investment projects of all forms are of particular importance. This expressly also includes projects involving high-quality administrative buildings and cultural venues as well as projects in the health care sector and in the research and educational sectors, namely investments in the construction of universities and hospitals and in the area of medical equipment. In cooperation with selected technical contractual partners, the Contractor shall also offer project planning, project management and project control on a Germany-wide basis.

An additional focal point comprises a comprehensive range of strategy and organisational consulting services for the entire field of public-sector management in Germany and at international level for ambitious modernisation and change projects. Starting with preliminary strategy consulting, this involves not only the planning and implementation of organisational models but also, for example, strategic sourcing planning. The range of services offered covers the entire spectrum of strategy and organisational consulting and focuses in particular on measures to enhance efficiency, administrative modernisation, mission-critical project solutions and the market-oriented provision of cross-departmental functions and support services.

Section 1

Parties to the Framework Agreement and to the individual contracts

- (1) The Contracting Entities are parties to this Framework Agreement, each, several or all of whom may be the Contracting Entity for individual contracts.
- (2) The Contractor is party to the Framework Agreement and to the individual contracts to be awarded on the basis thereof.

- (3) Should subcontracting companies be engaged to provide consulting services in accordance with section 8 in an individual case, these shall not become parties to the Framework Agreement and/or the individual contracts.

Section 2

Object of the Framework Agreement

- (1) The Contractor is to provide all the consulting, management and support services requested by the public authorities on the basis of the Framework Agreement and the individual contracts to be awarded on the basis thereof, in particular
- strategy consulting,
 - organisational consulting,
 - large-scale project management,
 - management of award procedures and projects,
 - investment consulting,
 - training and qualification measures and
 - mediation

in the areas of administrative modernisation, public IT systems, real estate/infrastructure and in the health care sector (cf. the preamble in this regard), unless excluded from doing so by legal provisions (cf. section 8 (2) of this Framework Agreement).

- (2) The Contracting Entities are not obliged to use the consulting services of the Company. The shareholders may also entrust third parties with the provision of consulting services as set out in section 2 during the entire term of the Framework Agreement.

Section 3

Basis of the Framework Agreement and the individual contracts to be awarded on the basis thereof

- (1) The Contracting Entities may award individual contracts to the Contractor for the services set out in section 2 in accordance with the Framework Agreement by way of an in-house award. The Contractor is generally obliged to execute these individual

contracts subject to its capacity, unless the execution cannot be reasonably expected of it for other reasons or the direct interests of other Contracting Entities are materially impaired as a result.

- (2) The Contracting Entities shall generally commission consulting services subject to the following rules:
- a) The Contracting Entity shall specify the required services pursuant to section 2. It shall provide the Contractor with all the information required to perform the service.
 - c) The Contractor shall draw up an offer on this basis in accordance with this Framework Agreement with the following contents:
 - starting situation,
 - tasks set / objective,
 - scope of services / planned procedures,
 - scheduling and milestone planning,
 - project team,
 - fee, scope of liability and invoicing arrangements,
 - travel expense policy of the Contractor (upon request by the shareholder).
 - d) The Contracting Entity shall examine the offer and, if necessary, request that the Contractor provides supplementary information to complete the offer.
 - e) The individual contract is considered awarded once the Contracting Entity has accepted this offer.

Section 4

Cooperation requirements

The Parties undertake to work together in a spirit of trust at all times to ensure the economical and reliable completion of tasks, to reciprocally provide each other with information in a timely manner to this end, and to coordinate any measures that affect the scope of the Framework Agreement and the individual contracts to be awarded on the basis thereof.

Section 5
Obligations of the Contractor

- (1) The Contractor undertakes to perform all the activities required for the proper and economical execution of the individual contracts that it is awarded on the basis of the Framework Agreement in accordance with section 3. It must ensure that these services are provided in accordance with the applicable legal provisions and the official requirements and conditions.
- (2) The Contractor shall obtain the approvals and permissions required for the provision of the consulting services to be obtained on the basis of this Framework Agreement and the individual contracts awarded on the basis thereof and/or shall maintain these approvals and permissions for the duration of the Framework Agreement and the execution of the individual contracts.
- (3) The Contractor is obliged to take part in board meetings in consultation with the Contracting Entity.

Section 6
Obligations of the respective Contracting Entity

- (1) The respective Contracting Entity shall use its best efforts to ensure that the agreed contractual objectives are reached. In particular, its obligations include making pending decisions, and performing other collaborative acts that it is obliged to perform, within a reasonable period for the proper implementation of the project.
- (2) The respective Contracting Entity shall provide the Contractor with all the documents and information required to perform the services to be provided under the Framework Agreement in full in a timely manner to the extent legally permitted and within its area of responsibility. The Contractor is obliged to check whether the documents received are complete and if necessary, to request from the respective Contracting Entity any missing data, information or documents required for the fulfilment of the contractual obligations.
- (3) The respective Contracting Entity shall inform the Contractor whether and to what extent the sharing of project documents and project information is precluded by confidentiality clauses agreed with third parties or for other reasons.

Section 7
Remuneration

- (1) The Contractor shall receive the remuneration agreed in the respective individual contract for the provision of the consulting services listed in section 2 and awarded by

means of an individual contract. The remuneration shall be stipulated by the parties to the individual contracts on the basis of the following:

- a) The remuneration of the Contractor for the consulting services in accordance with section 2 of this Framework Agreement shall generally be paid on the basis of the time required. The following hourly rates shall be used as a basis for the time-based remuneration:

- Member of the management board, senior manager ¹ :	€235
- Manager:	€200
- Senior consultant:	€150
- Consultant:	€115
- Junior consultant:	€80

All the consultants have a university degree or an equivalent qualification. The allocation to the levels named above is carried out in accordance with the organisational classification at the Contractor (based on the respective qualification and professional experience).

An hourly rate of €55 applies for additional employees who do not hold the above-mentioned qualification who perform work within the framework of the contract, and for tasks that do not require the above-mentioned qualification.

Instead of the individual consulting rates named above, a standard hourly rate of €160 can also be mutually agreed upon request by the Contracting Entity.

The hourly rates are quoted net plus the applicable statutory value added tax.

- b) Travel periods shall be invoiced and paid at 50% of the hourly rate set out under section 7 (1) a).
- c) The Parties may stipulate that the time required is to be invoiced either based on the actual time spent or based on the time expected to be spent, i.e. in accordance with agreed fixed amounts or planned budgets. In this context, fixed amounts shall be understood as unalterable lump-sum amounts, and budgets as remuneration limits that may only be altered with the consent of both Parties.
- d) The Parties may also make the payment of parts of the remuneration, particularly the level of the hourly rates or the fixed amounts set out in section 7 (1) a) and b), dependent upon the occurrence of a specific outcome. The level of the total

¹ Including directors

remuneration may not exceed the remuneration stated in section 7 (1) a) and b) by more than 25%. In addition, the outcome-related component of the remuneration may not exceed 50% of the total remuneration.

In particular, a shortening of the contractually recognised performance deadlines of the Contractor may be specified as an outcome. If the tender result predicted by the Contractor as part of the profitability calculation is confirmed or undercut by a submission result during an award procedure or subsequent operating activities, this can be specified as an outcome. In the event of the non-occurrence of an agreed outcome, the Parties may specify an appropriate reduction in the Contractor's remuneration claim. Any statutory claims or further claims arising for the Contracting Entity for other legal reasons, particularly arising under or due to a warranty, defective performance etc., shall remain unaffected by the foregoing provision.

- (2) The remuneration for the consulting services includes all consumables and work equipment, personnel costs and administrative costs required for the provision of the contractual services.
- (3) The respective Contracting Entity shall reimburse the Contractor for travel and accommodation expenses incurred in connection with the consulting services agreed under section 2 as well as any outlays incurred on business trips undertaken for the consulting services based on the Contractor's travel expense policy applicable at the time of conclusion of contract which is based on the provisions of the Federal Travel Expenses Act (BRKG). The Parties may also agree a flat-rate reimbursement of travel and accommodation expenses. Travel and accommodation expenses shall be shown separately on invoices or invoiced separately.
- (4) The Contractor shall issue a verifiable invoice as a single copy to the respective Contracting Entity for the services to be remunerated in accordance with subsection (1) after the provision of the service. In the case of contracts worth more than €100,000, down payments at regular intervals which reflect the services provided up to that point in time may also be agreed. The statutory value added tax payable on the invoice amount shall be shown separately. The respective Contracting Entity shall notify the Contractor in writing of any possible objections within four weeks of receipt of the invoice. If no objections are raised, the amount shown in the invoice shall become due and payable four weeks after receipt of the invoice. The amount shall be paid without any discount to the respective account specified by the Contractor.
- (5) The Contractor is obliged to provide the Contracting Entity in advance with the names of the employees who are to perform work within the scope of the contract. If the Contracting Entity does not agree to their employment or revokes an agreement given, the employees concerned may not – or may no longer – be assigned to work on the contract. If the performance of the contract is rendered difficult or impossible for the

Contractor as a result, it may refuse to perform the contract (any further) or may demand a modification.

Section 8

Consulting services by third parties

- (1) The consulting services to be provided by the Contractor in accordance with the Framework Agreement and the individual contracts placed on the basis thereof shall generally be provided by the Contractor itself. If the Contractor wishes to subcontract third parties for the provision of partial services, it must notify the Contracting Entity of this in advance. The respective Contracting Entity may, in the individual contract, reserve the right to only permit the commissioning of subcontractors by the Contractor with its express approval. The costs of performing any award procedures for the purpose of commissioning subcontractors shall be borne by the Contractor. If third parties are brought in at the request of the Contracting Entity, the Contracting Entity shall bear these costs.
- (2) If, in addition to the consulting services to be provided by the Contractor on the basis of the Framework Agreement, an individual contract also includes, due to the material circumstances, service components which the Contractor is prohibited from providing under the Legal Advice Act, the Tax Consultancy Act or the Banking Act, the Contractor shall award these in a separate subcontract to a subcontractor authorised to provide such service components. The Contractor shall inform the Contracting Entity thereof before commissioning the subcontractor. The subcontracting shall be included in the individual contract as a component of the commissioned tasks. The respective Contracting Entity may, within the individual contract, reserve the right to make the selection of a subcontractor subject to its consent. The costs of conducting any necessary award procedures for the purpose of commissioning subcontractors shall be borne by the Contracting Entity.
- (3) The Contractor itself is a public contracting entity pursuant to section 99 of the Act against Restraints of Competition. When selecting subcontractors, it shall observe the rules on awarding public contracts as well as section 16 (1) of this Framework Agreement. Section 5 (1) and section 17 et seqq. of this Framework Agreement apply accordingly to the consulting services provided by subcontractors.

Section 9

Impairment of performance

- (1) The services of the Contractor (also partial services, e.g. documents) shall be considered accepted provided the Contracting Entity does not object thereto or demand changes within 15 working days after their performance.
- (2) If the Contractor fails to fulfil its obligations under this Framework Agreement and under the individual contracts concluded on the basis thereof or does not do so in full or in a timely or proper manner, the Contracting Entity may set the Contractor once in writing a reasonable period to fulfil its contractual obligations without prejudice to its other legal claims. If the Contractor fails to comply with its obligations within this period, the Contracting Entity is entitled to carry out the services itself or have these carried out by third parties at the expense of the Contractor. This shall not apply if the Contractor is not responsible for the breach of duty.
- (3) If force majeure events prevent the Parties from the fulfilment of their obligations in whole or in part, they shall be released from the fulfilment of this Framework Agreement and the individual contracts awarded on the basis thereof until the cessation of the force majeure event. The Party suffering a force majeure event must notify the other Party thereof without delay. Remedies shall be agreed between the Parties. Force majeure events include, in particular, war, domestic unrest, earthquakes, explosions, fire, strikes and lockouts. Other circumstances for which the Parties are not responsible which could not be prevented despite the use of the greatest care, and whose consequences could not be averted, shall be regarded as force majeure events.

Section 10

Liability

- (1) The Contractor shall be liable for damage it causes intentionally or negligently in connection with the provision of services based on this Framework Agreement. Upon commissioning an individual contract, the Parties shall agree a limitation of the Contractor's liability at the usual market level depending on the type of matter for which consulting services are being provided.
- (2) The Contractor shall ensure that it has indemnity insurance in the amount of €1,000,000 (in words: one million) to cover possible damage which it may cause in connection with the provision of services on the basis of this Framework Agreement. If the Contracting Entity considers higher indemnity insurance to be necessary for an individual contract, the Contracting Entity shall pay the costs of obtaining such additional cover.
- (3) If in connection with the provision of its consulting services, the Contractor commissions third parties in accordance with section 8, these shall be considered

vicarious agents and assistants. Section 9 and the first sentence of section 10 (1) shall apply accordingly in this case.

Section 11

Intellectual property, rights of use

The right is reserved to stipulate provisions on intellectual property rights, particularly rights of use, industrial property rights and know-how, in the individual contract based on this Framework Agreement.

Section 12

Exclusion of liability

The Contractor shall be exempted from liability – regardless of the legal ground – if and to the extent that the damage was caused by instructions given by the Contracting Entity and these instructions were not coordinated with the Contractor or contradicted its advice.

Section 13

Set-off and rights of retention

The Contractor may only set off recognised claims due for payment or those having the force of res judicata, and assert rights of retention in respect of such claims, against claims arising under or in connection with the Framework Agreement and the individual contracts placed on the basis thereof.

Section 14

Duration and adjustment of remuneration rates

- (1) This Framework Agreement is not of limited duration. It enters into force for the individual Contracting Entity when it joins and signs the Agreement – at the earliest, however, once the conversion into the legal form of a GmbH has become effective – and ends upon termination of its shareholding under company law in the Company. If the Contractor still has outstanding contracts at such time, this Framework Agreement shall continue to apply for such contracts.
- (2) The other Contracting Entities authorise the Federal Republic of Germany to adjust the remuneration rates stated in section 7 of the Framework Agreement with the Contractor as of 1 October 2019 and subsequently, with effect as of 1 January 2020. The level of the adjustment shall not be less than the change in the overall cost-of-living price index

calculated by the German Federal Statistical Office occurring since the base value of August 2016 = 107.6 compared with the month of August 2019. This price adjustment shall be carried out thereafter every three years according to the same procedure, whereby the initial value of the subsequent adjustment shall be the value measured for the preceding adjustment. The remuneration for services in relation to contracts that were concluded before the adjustment shall not be changed by the adjustment, unless otherwise agreed in an individual case.

- (3) Upon request by 20% of the Contracting Entities or the Contractor, the Federal Republic of Germany and the Contracting Entity shall start negotiations on the conditions of this Agreement without delay with the aim of ensuring the demonstrable reasonableness of the remuneration in accordance with the principles of economic efficiency.

Section 15 Termination

- (1) This Framework Agreement can be duly terminated by either of the two Parties with a notice period of one year to the end of a financial year. A termination of this Framework Agreement by PD may only be carried out in relation to all shareholders simultaneously.
- (2) The right to terminate an individual contract on just and proper grounds shall remain unaffected by the foregoing provision. Just and proper grounds are deemed to exist in particular if
 - a) the Contractor is verging on insolvency, particularly if the opening of insolvency proceedings against its assets has been applied for or the opening of such proceedings is rejected due to a lack of assets or precautionary measures are ordered based on the Insolvency Code; if a third party files the application for the opening of insolvency proceedings, the Contracting Entity shall grant the Contractor the right to furnish proof of its continued ability to pay before the notice of termination is given;
 - b) the Contractor acts in breach of its duty to duly perform the tasks assigned to it despite receiving a written warning and a reasonable deadline being set; if the non-performance only affects individual services, just and proper grounds are only deemed to exist if the impairment of performance caused as a result thereof carries such weight that a significant impairment in the proper performance of the tasks assigned occurs overall as a result or in connection with other impairments of performance; if the Contractor is not responsible for the breach of duty, however, just and proper grounds are only deemed to exist if the Contracting Entity can no longer be reasonably expected to abide by the contract;

- c) during the term of contract, circumstances become known which create justified doubts about the Contractor's ability to pay, expertise and reliability, and these doubts are not refuted within a reasonable period.

Section 16

Conflicts of interests

- (1) Employees and executive bodies of third parties who have an interest in the preparation or execution of the project or who participate in an award procedure for the project as competitors or tenderers are excluded from participation in the consulting services of the Contractor.
- (2) The Contractor is obliged to maintain secrecy vis-à-vis third parties and the persons named in subsection (1) and may disclose information which it gains in connection with the consulting services as defined in section 2 (2) only after obtaining the written approval and complying with the respective legal norms of the respective Contracting Entity of the individual contract. To this end, the Contractor shall take suitable precautions in terms of IT systems, premises and staff, including in particular restricting access to the relevant data of the Contractor.
- (3) The Contractor shall ensure that its employees and, if appropriate, any subcontractors and their employees submit a confidentiality agreement stating that they will not disclose to third parties and to the persons named in subsection (1) information that they obtain, particularly about the individual procedures or the general strategy of the Contracting Entities, without the written approval of the respective Contracting Entity.
- (4) The Contractor undertakes to document all decisions, steps and processes of its consulting activity carefully and in a comprehensible manner.

Section 17

Data protection

- (1) The Contractor shall comply with the provisions of the German Federal Data Protection Act (BDSG) and the respective state-level Land Data Protection Act (LDSG). It shall process personal data from the respective Contracting Entities. The transmission of data shall only be carried out in accordance with the instructions of the respective Contracting Entities. The respective Contracting Entities shall provide the Contractor with the data required for the implementation of the contract. The data may only be processed for this purpose. The Contractor warrants that only employees who are obliged to maintain data secrecy in accordance with section 5 of the German Federal Data Protection Act shall be assigned to the performance of the contract.

- (2) The data protection officers of the Contracting Entities may, at any time, carry out inspections and checks to ensure that the contractual performance complies properly with the relevant data protection provisions and the specifications of the respective Contracting Entities. The Contractor warrants that data protection officers of the respective Contracting Entities shall be granted access to the relevant premises of the Contractor. Any violation of data protection and data backup measures is deemed to be a just and proper ground as defined in section 15 (2).

Section 18

Place of performance

The place of performance for all performance based on the Framework Agreement and the individual contracts awarded on the basis thereof is the respective registered office of the respective Contracting Entity, unless otherwise agreed.

Section 19

Confidentiality

- (1) The Contractor may use the information gained through its consulting activities solely for internal purposes. In the case of publications, it must be ensured that no conclusions can be drawn regarding specific projects without the approval of the Contracting Entity. The Contractor shall treat trade and business secrets of the Contracting Entities and any third parties involved as confidential vis-à-vis third parties.
- (2) Project-specific information from individual contracts shall otherwise only be made available to third parties after obtaining the approval of the Contracting Entities and any affected third parties.

Section 20

Monitoring

The respective Contracting Entity is entitled to monitor itself the fulfilment of tasks assigned to the Contractor or through competent third parties that it commissions.

Section 21

Transferability

- (1) Rights and duties arising under the Framework Agreement may not be transferred or assigned in whole or in part without the prior approval of the respective other party. This is without prejudice to section 8.
- (2) The Parties hereby irrevocably declare in advance their consent to additional direct or indirect shareholders of the Contractor of this Framework Agreement joining this Framework Agreement on the side of the Contracting Entities, provided these are public contracting entities as defined in section 99 of the Act against Restraints of Competition.
- (3) The Parties irrevocably authorise the Federal Republic of Germany to enter into this Framework Agreement with these new direct or indirect shareholders also in the name of the Contracting Entity. The Federal Republic of Germany is exempted from the restriction set out in the second sentence of section 181 of the German Civil Code.

Section 22

Contractual costs

Each Party shall pay its own costs and expenses, including fees, costs and expenses for consulting, that are incurred in connection with the conclusion of this Agreement and the conclusion of the consulting agreements concluded on the basis of this Agreement.

Section 23

Severability clause

Should a provision of this Framework Agreement be or become completely or partially void, ineffective or unenforceable, this shall not affect the validity and enforceability of all the remaining provisions. The provision which is completely or partially void, ineffective or unenforceable shall be considered replaced by an effective and enforceable provision which most closely approximates the commercial aim pursued with the completely or partially invalid, ineffective or unenforceable provision according to object, measure, time, place or scope. In particular, the commercial aim shall be considered the securing of the in-house status of the Contractor vis-à-vis the Contracting Entities. The first, second and third sentences above shall apply accordingly to any gaps in the Framework Agreement.

Section 24

Final and transitional provisions

- (1) In the event of the dissolution of the Contractor by shareholder resolution or any other dissolution or termination, the Contractor shall take all the necessary measures which ensure that the obligations entered into on the basis of the Framework Agreement or the respective individual contracts can be performed by third-party consulting firms. The performance of the services by third parties requires the prior approval of the Contracting Entity. If the Contracting Entity does not give its approval, the Contractor continues to be obliged to render performance.
- (2) The exclusive place of jurisdiction for all disputes between the Parties arising under this Framework Agreement and the individual contracts awarded on the basis thereof is Berlin, Germany. German law shall apply.
- (3) Amendments and supplements to this Framework Agreement are effective only if they are made in writing. This also applies to an amendment of this written form clause.

Berlin, (date)

On behalf of the Contracting Entities

On behalf of the Contractor
