

**Supplement to the Official Journal of the European Union**Info and online forms: <http://simap.ted.europa.eu>**VOLUNTARY EX ANTE TRANSPARENCY NOTICE**Directive 2014/23/EU ☒Directive 2014/24/EU ☐Directive 2014/25/EU ☐Directive 2009/81/EC ☐

This notice aims at providing voluntary prior transparency as referred to in Article 2d(4) of Directives 89/665/EEC and 92/13/EEC on remedies, and Article 60(4) of Directive 2009/81/EC.

SECTION I: CONTRACTING AUTHORITY/ENTITY**I.1) Name and addresses**

Official name: Österreichische Bundesforste AG			National registration number:
Postal address: Pummergasse 10-12			
Town: Purkersdorf	NUTS code: AT12	Postal code: 3002	Country: Austria
Contact person:			Telephone: +43 62432335
E-mail: flachgau-tennengau@bundesforste.at			Fax: +43 624323357809
Internet address(es) Main address: (URL) www.bundesforste.at Address of the buyer profile: (URL)			

I.4) TYPE OF THE CONTRACTING AUTHORITY

☐ Ministry or any other national or federal authority, including their regional or local subdivisions	☐ Body governed by public law
☐ National or federal agency/office	☐ European institution/agency or international organisation
☐ Regional or local authority	☒ Other: Forstwirtschaft
☐ Regional or local agency/office	

I.5) MAIN ACTIVITY

☐ General public services	☐ Housing and community amenities
☐ Defence	☐ Social protection
☐ Public order and safety	☐ Recreation, culture and religion
☐ Environment	☐ Education
☐ Economic and financial affairs	☒ Other activity: Forstwirtschaft
☐ Health	

I.6) MAIN ACTIVITY

☐ Cost criterion ☐ Price Name: / Weighting:
(Directive 2014/23/EU) Criterion: Preis
(Directive 2009/81/EC) ☐ Lowest price ☐ The most economically advantageous tender in terms of Criterion: / Weighting:
II.2.11) Information about options Options: ☐ yes ☒ no Description of options:
II.2.13) Information about European Union funds The procurement is related to a project and/or programme financed by European Union funds ☐ yes ☒ no Identification of the project:
II.2.14) Additional information:

SECTION IV: PROCEDURE

IV.1) Description

IV.1.1) Type of procedure ☐ Negotiated procedure without prior publication (in accordance with Article 32 of Directive 2014/24/EU) ☐ Negotiated procedure without prior call for competition (in accordance with Article 50 of Directive 2014/25/EU) ☐ Negotiated procedure without publication of a contract notice (in accordance with Article 28 of Directive 2009/81/EC) ☐ Award of a concession without prior publication of a concession notice (in accordance with Article 31(4) and (5) of Directive 2014/23/EU) ☒ Award of a contract without prior publication of a call for competition in the Official Journal of the European Union in the cases listed below (please complete point 2 of the Annex D)
IV.1.3) Information about framework agreement ☐ The procurement involves the establishment of a framework agreement
IV.1.8) Information about the Government Procurement Agreement (GPA) The procurement is covered by the Government Procurement Agreement ☐ yes ☒ no

IV.2) Administrative information

IV.2.1) Previous publication concerning this procedure Notice number in the OJ S: [] [] [] [] /S [] [] [] [] [] [] [] [] [] []
--

SECTION V: AWARD OF CONTRACT/CONCESSION

Contract No:[] Lot No:[] Title:[Pachtvertrag für Abbau]

V.2) Award of contract/concession

V.2.1) Date of conclusion of the contract/concession award decision: 14/01/2020

V.2.2) Information about tenders

The contract has been awarded to a group of economic operators ☐ yes ☒ no

V.2.3) Name and address of the contractor/concessionaire

Official name: Salzburger Sand- und Kieswerke GmbH			National registration number:
Postal address:			
Town: Salzburg	NUTS code: AT3	Postal code:	Country: Austria
E-mail:			Telephone:
Internet address:(URL)			Fax:
The contractor is an SME ☐ yes ☒ no			

V.2.4) Information on value of the contract/lot/concession (excluding VAT)

Initial estimated total value of the contract/lot/concession: [EUR]

Total value of the contract/lot/concession: [1]

or

Lowest offer: [] / Highest offer: [] taken into consideration

Currency: EUR

for framework agreements – total maximum value for this lot

for contracts based on framework agreements, if required – value of contract(s) for this lot not included in previous contract award notices

V.2.5) Information about subcontracting

☐ The contract/lot/concession is likely to be subcontracted

Value or proportion likely to be subcontracted to third parties

Value excluding: [] Currency: [] [] []

Proportion: [] %

Short description of the part of the contract to be subcontracted:

☐ All or certain subcontracts will be awarded through a competitive procedure (see Title III of Directive 2009/81/EC)

☐ A share of the contract will be subcontracted through a competitive procedure (see Title III of Directive 2009/81/EC)

Minimum percentage: (%)

Maximum percentage: (%)

(The maximum percentage may not exceed 30 % of the value of the contract)

SECTION VI: COMPLEMENTARY INFORMATION

VI.3) Additional information

Der Pachtvertrag wurde noch nicht abgeschlossen, sondern ist für den 3.2.2020 geplant. Da kein öffentlicher Auftrag im Sinne des BVergG 2018 (RL 2014/24/EU) bzw. BVergKonz 2018 (RL 2014/23/EU) vorliegt, wurde bei den Angaben zum Wert des Auftrags kein Auftragswert (bzw EUR 1,- eingesetzt) angegeben.

VI.4) Procedures for review

VI.4.1) Review body

Official name: Bundesverwaltungsgericht

Postal address: Erdbergstraße 192 – 196		
Town: Wien	Postal code: 1030	Country: Austria
E-mail: einlaufstelle@bvwg.gv.at	Telephone: +43 1/60149/0	
Internet-Address:(URL) https://www.bvwg.gv.at/	Fax: +43 71123/8891541	
VI.4.2) Body responsible for mediation procedures		
Official name:		
Postal address:		
Town:	Postal code:	Country: Austria
E-mail:	Telephone:	
Internet-Address:(URL)	Fax:	
VI.4.3) Review procedure		
Precise information on deadline(s) for review procedures:		
VI.4.4) Service from which information about the review procedure may be obtained		
Official name:		
Postal address:		
Town:	Postal code:	Country: Austria
E-mail:	Telephone:	
Internet-Address:(URL)	Fax:	

VI.5) Date of dispatch of this notice: (dd/mm/yyyy)16/01/2020

Annex D4 – Concession

Justification for the award of the concession without prior publication of a concession notice in the Official Journal of the European Union
Directive 2014/23/EU

- ☒ **1. Justification for the award of the concession without publication of a concession notice in accordance with Article 31(4) and (5) of Directive 2014/23/EU**
- ☐ No applications, no tenders or no suitable tenders/applications in response to a prior concession award procedure
- ☐ The works or services can be provided only by a particular economic operator for the following reason:
- ☒ concession aiming at the creation or acquisition of a unique work of art or artistic performance
 - ☒ absence of competition for technical reasons
 - ☒ existence of an exclusive right
 - ☒ protection of intellectual property rights and exclusive rights other than those defined in point (10) of Article 5 of the directive

● **2. Other justification for the award of the concession without prior publication of a concession notice in the Official Journal of the European Union**

☒ The procurement falls outside the scope of application of the directive

3.Explanation

Gemäß § 9 Absatz 1 Z 10 Bundesvergabegesetz 2018, Erwägungsgrund 15 und Art 10 lit a) der Richtlinie 2014/24/EU sowie § 8 Z 12 Bundesvergabegesetz Konzessionen 2018 und Art 10 Abs 8 lit a) der Richtlinie 2014/23/EU fallen Verträge über Erwerb, Miete oder Pacht von Grundstücken oder vorhandenen Gebäuden oder anderem unbeweglichen Vermögen oder Rechten daran, ungeachtet deren Finanzierungsmodalitäten nicht in den Anwendungsbereich des BVergG 2018 /des BVergGKonz 2018 bzw. in den Anwendungsbereich der Richtlinien 2014/24/EU oder 2014/23/EU. Der geplante Vertrag sieht ein „Gewinnungsrecht“ (Abbau) für bergfreie mineralische Rohstoffe iSd § 3 Abs 1 Z 4 MinroG vor. Es liegt eine Verkaufs- bzw. Bestandgabesituation vor. Die ÖBf AG tritt nicht als Nachfragerin am Markt auf, sondern räumt vertraglich ein Recht zur Nutzung öffentlicher Ressourcen ein. Es wird keine Dienstleistungskonzession vergeben, es liegt auch kein Auftrag vor. Es handelt sich um eine Verpachtung eines Grundstücks ohne Betriebspflicht mit der Ermächtigung/Bewilligung Schotter- und Festgesteinsmaterial abzubauen und aufzubereiten. Es besteht keinerlei gesetzliche noch vertragliche Betriebspflicht. Seitens des Pachtnehmers ist lediglich ein Pachtzins zu entrichten. Der gegenständlichen Vereinbarung fehlt es an einer Verpflichtung des Wirtschaftsteilnehmers gegenüber einer Behörde oder eines öffentlichen Auftraggebers, bestimmte Leistungen zu erbringen. Es ist daher kein Beschaffungsvorgang im Sinne einer einklagbaren Hauptleistung vorliegend. Der geplante Vertrag unterliegt weder dem sachlichen Geltungsbereich des BVergG 2018/ BVergGKonz 2018 noch dem Anwendungsbereich der Richtlinien 2014/24/EU oder 2014/23/EU, sondern liegt eine reine nicht dem Vergaberecht unterliegende Bestand- und Verkaufssituation vor.