

HOW THE ABG 1975 WORKS IN GERMANY 2023

1. The NATO SOFA is the overarching Agreement that defines in:

- Article 49.2
Construction works shall be carried out by the German authorities (**Indirect procedure**) IAW German legal provisions and administrative regulations in force and IAW special administrative agreements. (i.e. **ABG 1975**)
- Article 49.3
The US may carry out construction works with their own personnel or by letting contracts directly to contractors (**Direct procedure**) IAW special administrative agreements. (i.e. **ABG 1975**) US shall respect German building and environmental regulations and shall ensure, in cooperation with the German authorities, that the necessary permissions are obtained.

2. The ABG 1975 Agreement and intent:

- An international, bilateral, administrative agreement between German federal ministry of Construction (BMWSB) and each sending state force (SSF)
- Governs how construction works are accomplished in Germany for and by SSF (Indirect and Direct procedure)
- Signed by other SSF in 1975
- US signed in 1982 after first agreeing on detailed procedures covered in Protocol of Signature (PoS) and Implementing Instructions (IIs)

3. Three levels of host nation authorities and responsibilities:

I) Superior technical authority (Oberste Technische Instanz/OTI) - no ABG approval limit:

- Federal Ministry of the Living, Community and Construction (BMWSB) Civil Projects**
 - Federal Ministry of Defense (BMVg) Military Projects**
- Initiate federal construction projects (to include U.S. projects) by delegating project to the state and provides policy. **BMI has the lead in regard to the ABG 1975.**

II) Technical oversight (Fachaufsicht fuhrende Ebene/FfE) – ABG approval limit: € 375k:

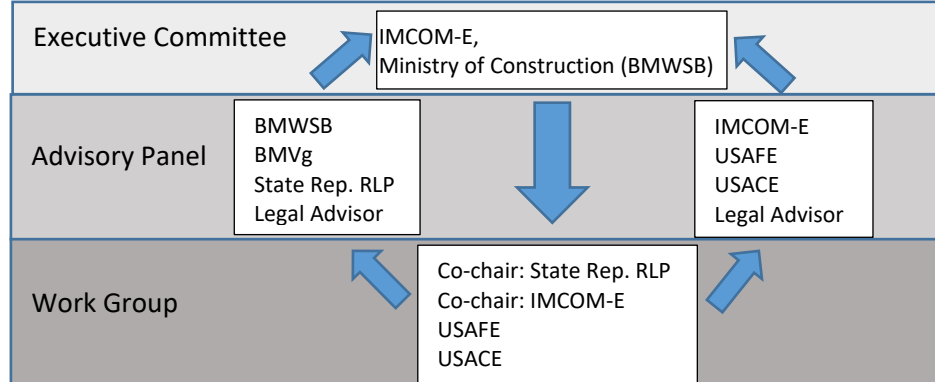
- State – Federal construction Office**
Baden Wuerttemberg/Bavaria/Hessen/Rheinland-Pfalz/Nordrhein Westfalen
- Construction in Germany is based on State laws and State construction ordinance (Landesbauordnung)
 - Provides guidance from Ministries to Bauamt
 - Responsible for the organization of the Bauamt to include staff
 - Each State has a section embedded that is directly reporting to the Ministry of Construction, funded by the Ministry and provides guidance to the Bauamt

III) Execution (Baudurchfuehrende Ebene/BdE) – ABG approval limit: €150k, repair unlimited:

- State – Building Authority (local Bauamt)**
- Execute design and construction
 - Coordination with local entities
 - Construction permitting authority for notification process for federal construction projects
 - Coordinates complex permitting process like BImSchG or ATAP process related to function

4. ABG 1975 Working Group:

Board to discuss ongoing issues and provide recommendations to the executive committee



Current discussion points: Lost Design, payment timelines, planning efforts

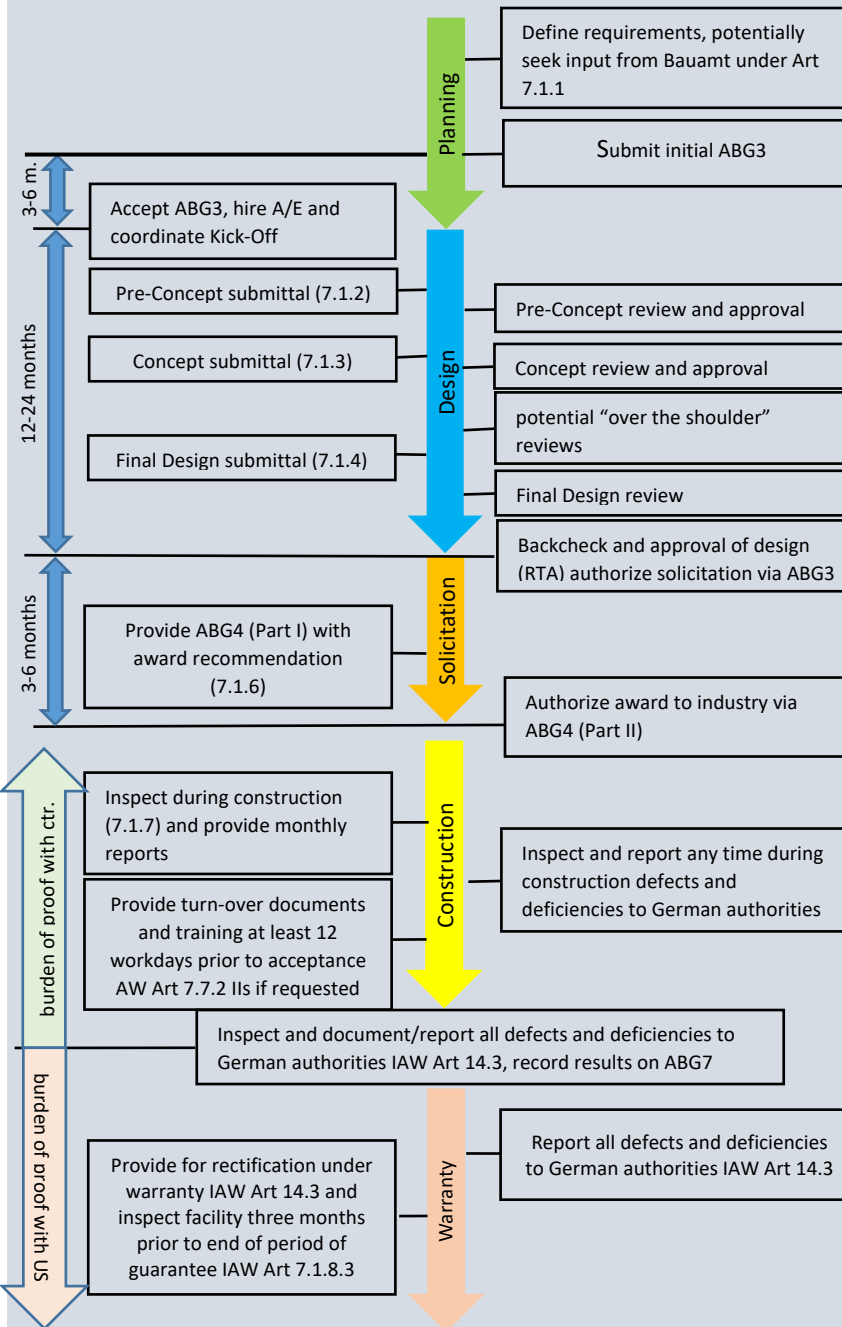
5. Two methods of construction execution:

5.1 Indirect Procedure via the Bauamt is standard procedure:

The complete remuneration for the services is calculated as % from the construction cost:

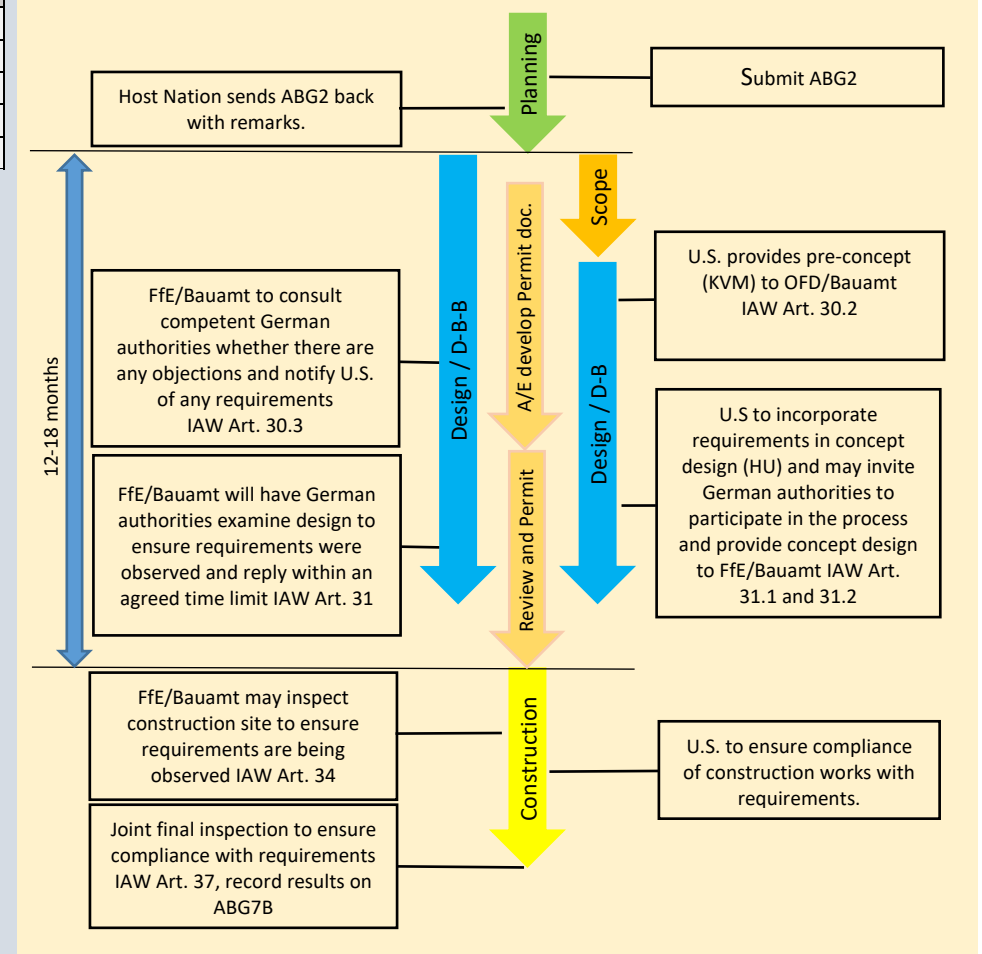
Repair & Maintenance (Art. 1.3) 7.0% + 0.5% translation	
• Design (Art 7.1.2, pre-concept/KVM)	0.4% (7% x 5%) + (0.5% x 10%)
• Design (Art 7.1.3, concept/HU)	1.2% (7% x 15%) + (0.5% x 30%)
• Design (Art 7.1.4, final design/AfU)	1.7% (7% x 20%) + (0.5% x 60%)
• Advertisement & Award (Art 7.1.5-7.1.6)	1.4% (7% x 20%)
• S & A (Art 7.1.7)	2.8% (7% x 40%)
New Construction, alterations, additions (Art. 1.4) 5.0% + 0.6% translation	
• Design (Art 7.1.2, pre-concept/KVM)	0.31% (5% x 5%) + (0.6% x 10%)
• Design (Art 7.1.3, concept/HU)	0.93% (5% x 15%) + (0.6% x 30%)
• Design (Art 7.1.4, final design/AfU)	1.36% (5% x 20%) + (0.6% x 60%)
• Advertisement & Award (Art 7.1.5-7.1.6)	1.0% (5% x 20%)
• S & A (Art 7.1.7)	2.0% (5% x 40%)

Note: Additional services (item 7 of this summary) are separately reimbursed on actual cost basis.



5.2 Direct Procedure limited to the following projects:

In consultation (inform) with German authorities:
(a) repairs and maintenance work (unlimited construction amount)
(b) construction works which require special security measures (unlimited con. amount)
(c) very minor construction work (up to 150,000 Euro)
In agreement (approval) with German authorities:
(d) minor constructworks (up to 375,000 Euro/State and 6 mil Euro/FMoD;FMoC)
(e) exceptionally, construction work in other cases (integration of equipment, troop construction, MOU,...)



6. Forms in the process (Direct and Indirect):

	Purpose (D/I)	Art.	Provided by
ABG1	Program Coordination (D/I)	3.1	IMCOM-E / AF
ABG2	Letter of Intent for Direct Procedure (D)	27	SRM - DPW / MILCON - USACE
ABG7B	Record of Joint Final Inspection, Direct Executed Work (D)	37.1	HN
ABG3	Request/Approval/Award Document (I)	10	Contracting – KO
ABG4	Tender Acceptance (I)	7.1.6	Part I – HN / Part II - KO
ABG5	Change Order (I)	12	HN
ABG5A	US Change Request (I)	4.2.2	RE with warrant
ABG6	Order Document for Term Contract (I)	1.8	US
ABG7	Record of Construction Turn Over to US (I)	14	HN
ABG8	Invoice of Construction Cost (I)	25	HN
ABG9	Invoice of Administrative Fee (I)	26	HN

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Nr	7. Description of Additional Services/ updates possible! (<u>actual cost reimbursable</u> but <u>administrative efforts</u> are covered under the <u>administrative fee, Art 20.1</u>)	D /C	Com.
1.1	Providing basis for design / requirements planning	D	YES
1.2	Monitoring/support of the U.S. pre-concept design (KVM) and completion / re-design of the U.S. design	D	YES/NO
1.3	Charrette	D	YES
1.4	N/A since 12 AUG 2021	D	N/A
1.5	Preparation of design concept	D	NO
1.6	Technical expertise regarding the construction site	D	NO
1.7	Archeological survey	D	YES
1.8	Traffic, utility surveys / studies	D	YES
1.9	Energy consumption analysis	D	YES
1.10	Topographic survey / site survey	D	YES
1.11	Water flow tests	D	YES
1.12	Grid compatibility calculation (electricity)	D	YES
1.13	Structural consultant services to prepare AT/FP dynamic calculations	D	YES
1.14	A/E services for the U.S. AT/FP	D	NO
1.15	Seismic design	D	YES
1.16	Calculation of square footage (gross interior area) IAW the U.S. regulations	D	YES
1.17	Room book / Room finishing schedule	D	YES
1.18	Sample boards	D	YES
1.19	Models and renderings	D	YES
1.20	Additional design submittals	D	YES
1.21	Additional reproductions	D	YES
1.22	Review of special submittals by a U.S. A/E	D	YES
1.23	Interior design	D	YES
1.24	Incorporation of U.S. government furnished equipment and/or material	D	YES/NO
1.25	Interior and exterior way-finding plan	D	NO
1.26	Design IAW German Energy Saving Ordinance (EnEV)	D	NO
1.27	Updating as-built drawings	D	YES/NO
1.28	Involvement of a U.S. A/E by the GCA	D	NO
1.29	Design according to the U.S. standards	D	YES/NO
1.30	Updating the sewage master plan and the installation waste water disposal concept (LAK / GEP)	D	YES/NO
1.31	Potable water analysis	D	YES/NO
1.32	Dr. Checks	D	NO
1.33	Risk assessment	D	YES
1.34	Installation development plan, urban design, land-use plan	D	YES/NO
1.35	Life cycle cost analysis, calculation of economic efficiency	D	YES
1.36	Environmental compatibility studies (UVS)	D	YES
1.37	Landscape conservation plan (LBP), nature conservation	D	YES
2.1	Environmental surveys and studies in general, inventories for developing environmental compatibility study (UVS) or the landscape conservation plan (LBP) / nature conservation expertise	D+C	YES
2.2	Water preservation compensation measures and / or nature protection and landscape conservation and replacement measures incl. reforestation and ecological construction monitoring (planning, ecological construction monitoring, long-term care, monitoring for a period of e.g. 20-25 years). Only in case the compensation measures are implemented outside the U.S. installations	D+C	YES
2.3	Water preservation compensation measures and / or nature protection and landscape conservation and replacement measures incl. reforestation and ecological construction monitoring (planning, ecological construction monitoring, long-term care, monitoring for a period of e.g. 20-25 years). Only in case the compensation measures are implemented on the U.S. installations	D+C	NO
2.4	Soil survey including soil layer inspection and geotechnical report	D+C	YES
2.5	Survey of sites contaminated by the U.S. Forces (e.g. determination of alternatives for disposal and recovery of contaminated waste)	D+C	YES
2.6	Building condition survey	D+C	NO
2.7	Building structural survey of existing buildings	D+C	YES
2.8	Asbestos / HazMat survey in existing buildings and the exterior area	D+C	YES
2.9	TV camera recording of the sewer system	D+C	YES
2.10	Technical survey in general, related to a building, e.g. a) Energy savings / thermal insulation survey b) Noise protection survey (emission) c) Fire protection survey d) Acoustic survey	D+C	NO
2.11	Structural proofing engineer services	D+C	NO
2.12	LEED consultant services	D+C	YES
2.13	Commissioning (Cx) according to the U.S. requirements	D+C	YES
2.14	BIM	D+C	YES
2.15	Conversion of common German CAD formats to other (U.S. or other) specific formats	D+C	YES
2.16	Fire Department Operation Plan; Fire/ Emergency Evacuation Plan	D+C	YES
2.17	Construction phasing plan incl. temporary measures and moving schedule (see explanation)	D+C	NO
2.18	Translation of special documents	D+C	YES
2.19	Translation, interpretation	D+C	NO
2.20	Virtual project room	D+C	YES
2.21	Rental fees for conference facilities	D+C	NO
2.22	Safety and health coordinator services	D+C	YES
2.23	UXO survey	D+C	YES
3.1	UXO removal	C	YES
3.2	Landfill fees	C	YES
3.3	SAM (RLP)	C	YES
3.4	Construction monitoring (general construction supervision) by specialized companies	C	NO
3.5	Acceptance inspection and certification by authorized experts (e.g. TÜV)	C	NO
3.6	Connection cost (utilities)	C	YES/NO
3.7	Licenses, rights of way for the construction time of a single construction project	C	YES
3.8	Compensation of economic loss due to early tree cutting	C	YES
3.9	As-built drawings provided to the U.S. (after construction completion)	C	NO
3.10	Cadastral survey	C	NO
3.11	Expert opinion in case of a dispute with the contractor (opinion ordered by a party)	C	YES
3.12	Attorney fees, incl. court fees	C	YES

8.1 Reimbursement for 'Normal' Planning Work IAW Art 20.1:

- Design that results in construction placement is compensated via the administrative fees.
- Design that does not result in construction placement is therefore 'lost', and is considered additional planning work.

8.2 Reimbursement for Additional Planning Work ('lost design') IAW Art 20.2:

"The German authorities shall also be paid adequate compensation for any additional planning work if this has become necessary as a result of the belated transmission to them of the request for observance of Forces standards or regulations (under Art. 4.2 and 4.3)"

Four cases defined in IIs and PoS:

- For additional planning resulting from design changes requested by the US Forces, after the **KVM-Bau has been approved**. (20.1 IIs)
- US Forces' request for design changes made prior to the approval of the KVM-Bau **if substantial planning works or substantial parts of the planning work have to be repeated**. (20.2 IIs)
- When the US Forces request solicitation of construction services by way of **deductive items** (5.9 IIs), the services will be separately compensated, even in case when one or more deductive items are not awarded. (20.3 IIs)
- Belated transmission to observe Forces regulations or standard** under ABG 1975 Art. 4.2 and 4.3 (ABG 1975 Art. 20.2). A belated transmission is deemed to be any further request after submission of the concept design. (20.1 PoS)

8.3 Calculation of adequate compensation:

Adequate compensation under ABG 1975 Art 20.2 shall, in general, be determined in accordance with percentages shown in ABG 1975 Art 23 (20.2 PoS).

Design Fee Art. 23.1 23.2 PoS	Pre-Concept (Art 7.1.2) Art 24.1.1.1	Concept (Art 7.1.3) Art 24.1.1.2	Final Design (Art 7.1.4) Art 24.1.1.3	Solicitation (Art 7.1.5) Art 24.1.1.4	Award (Art 7.1.6) Art 24.1.1.5	Construction (Art 7.1.7) Art 24.1.1.6
5%/7%	5% (5%)	15% (20%)	20% (40%)	15% (55%)	5% (60%)	40% (100%)
0.6%/0.5%	10% (10%)	30% (40%)	60% (100%)			

Note: As per ABG 1975, 20.1 IIs additional design efforts are to be compensated IAW the fee structure (Art 24.1). However, this is deemed to be the minimum compensation. Actual costs can be compensated up to full fee IAW Art 24.2 and Art 23. Not to exceed the Maximum amount 5.6%/7.5% as per Art 24.2 (actual costs) but with full documentation of all requested cost.

8.4 Example (20 IIs, 20.1 PoS)

After submission of the AFU-Bau (final design) for the construction of a new building with an ECC €6.0M the US Forces request to change the flat roof to a green roof.

Process:

- Agree with Bauamt what has been changed or deleted when in the process.
- Use the ECC and changed scope to calculate % of change to the design
- Calculate minimum as per Art 24.1 and IAW the fee structure
- Calculate maximum not to be exceeded as per Art 23.
- Verify documentation for actual costs

Example:

PDT agreed that 30% of \$5 mil new construction was changed after concept design:

Min: (20%*5%+40%*0,6%) * 30%* 5,000,000 = 51'000

Max: 5.6%*30%*5,000,000 = 84,000

Even if actual costs would exceed the max amount calculated, compensation not to exceed 84k.

9. MILCON Code Directives AR 420-1:

- 0 – No Design Authorized
- 1 – Planning Activities Prior to Design
- 2 – Concept Design
- 3 – Project Definition (Parametric Estimate 3086)
- 4 – Design Held in Abeyance
- 5 – Deferred from Program
- 6 – Final Design
- 7 – Preliminary Design
- 8 – Project Cancelled
- A – Authority to Advertise, but not awarded
- 9 – Construction Contract Award Authorized

10. Challenges to timely deliver adequate scope within budget:

Industry in Germany is booming while the Federal Government is investing in infrastructure, growing Bundeswehr and Federal Police. With this, **resources from construction contractors** are limited which is leading to high bid prices and none responsive contractors. Also, acquisition of **capable designers** is challenging. Finally, resources at the **Federal Construction Authority** are extremely limited which is causing additional delays.

10.1 Optimize Design Process:

- Adequate **planning process** to define project requirements and acquisition method.
- Involve Bauamt (Art 7.1.1) in the panning process to get "**regional scope factor**".
- Early involvement of the Bauamt will facilitate **acceptance of ABG3** by host nation.
- Adequate **Description of Construction Works IAW Art 11/11 IIs:**
 - General description** of the requested construction project as a whole.
 - Information on type, size, **use, purpose**, location, development measures and subsequent facilities required in this connection (with plans as appropriate, but at least a site plan).
- Identify all applicable **U.S. Standards and Requirements** (Art. 4.2 and 4.3, 4.1.1 IIs) with version date.
 - Minimize the number** of applicable U.S. standards (seek input from Engineering)
 - Consider **potential additional services** due to increase design effort and/or evaluation of stricter standard
- Seek **continuous interaction** during the design process

10.2 MOU/AP in RP,BA,BW,HE to max. efficiency of Bauamt resources :

The consolidated ABG1 List (Airforce and Army) for FY18 / FY19 shows over **480 Projects** with a total placement of **over \$2 Billion** in the state of Rhineland Palatinate.

Various local Bauamts have **rejected projects** due to lack of capacity and resources.

The interpretation of the ABG 1975, Art 27 (projects that qualify for direct acquisition) as per Host Nation is putting **significant limitation** on the U.S. to maximize direct acquisition. The MOU/AP defines additional acceptable projects under Art 27.1.5 for **direct project execution and** emphasizes review by HN to ensure compliance with permitting requirements by:

- Detailed permitting documents will be **provided by the U.S.**
- Bauamt will **verify compliance with HN laws and regulations** while U.S. coordinate in detail with other HN entities during the design process.
- HN will receive **2% of the construction cost for compensation** of the additional effort to involve other Host Nation agencies.
- Joint final inspection** to verify compliance.

10.3 When bids come in high:

