

Regulation PR No. 30/53 on Pricing in Public Contracts

Pricing Regulation 30/53

Date of issue: 21 November 1953

Full title:

"Regulation PR No. 30/53 on pricing in public contracts of 21 November 1953 (BAnz 1953, No. 244), last amended by Article 1 of the Regulation dated 25 November 2021 (BGBl, part I, p. 4968)"

Status: Last amended by Article 1 of the Regulation dated 25 November 2021, p. 4968

Note

(+++ Text reference valid as of: 1 January 1968 +++)

(+++ For application refer to Article 12 (2) +++)

Introductory Caption

To ensure stricter observance of market principles in public contracts the following is decreed in accordance with Article 2 of the Price Act of 10 April 1948 (WiGBl, p. 27)/3 February 1949 (WiGBl, p. 14)/21 January 1950 (BGBl, p. 7)/8 July 1950 (BGBl, p. 274)/25 September 1950 (BGBl, p. 681)/23 December 1950 (BGBl, p. 824) and 29 March 1951 (BGBl, part I, p. 223) as amended by Article 37 of the Act on Investment Assistance by Industry of 7 January 1952 (BGBl, part I, p. 7):

Article 1 General Principle

- (1) In determining the prices of goods and services supplied or to be supplied under public contracts, market prices according to Article 4 below shall, in principle, be given preference over cost prices according to Articles 5 to 8 below.
- (2) Where the nature of the contract permits, fixed prices shall be agreed. Prices shall be fixed when the contract is made.
- (3) No prices exceeding those allowable under the provisions of this Regulation shall be requested, promised, agreed, accepted or granted for goods and services supplied or to be supplied under public contracts.

Article 2 Scope

- (1) Public contracts within the meaning of this Regulation are contracts awarded by the Federal Government, the Länder, the municipalities or other legal entities under public law.
- (2) The Federal Ministry for Economic Affairs and Energy, in agreement with the federal ministry concerned, may direct that the provisions of this Regulation shall not apply to contracts awarded by companies which are, or are operated by, legal entities under public law, provided that these companies sell their products or services in competition with private companies.
- (3) The provisions of this Regulation shall apply to contracts awarded by foreign armed forces and the civilian components of such forces (as defined in subsection 1b of Article I of

the Agreement between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces of 19 June 1951 (BGBl 1961, part II, pp. 1183, 1191) which are stationed in the territory of the Federal Republic of Germany in accordance with international agreements.

(4) The provisions of this Regulation shall also apply

1. where the public customer so requests, to subcontracts under public contracts, provided that the subcontractor is notified of this request before or at the time when the contract is made or that his consent is obtained afterwards,
2. to requisitions ordered by German authorities, provided, however, that without the contractor's consent prices shall not be lower than those allowable under this Regulation.

(5) The provisions of this Regulation shall not apply to construction contracts. Construction contracts within the meaning of this Regulation include the entire construction work with or without supply of material and components used for the construction, repair, maintenance, modification or removal of physical facilities. Construction work does not include assembling work including installation work provided by electrical industry and mechanical engineering.

Article 3 Applicability of Price Provisions

Public contracts shall be subject to the general and special price provisions.

Article 4 Prices of Marketable Services

(1) Where public contracts are for marketable services, prices shall not exceed current market prices allowable under price law.

(2) A marketable service is a service for which, at the time of contract award, there is a market of supply and demand with functioning competition (general market). A service is also marketable if, for its procurement, a market has been created by means of a contract award procedure with at least two suppliers submitting acceptable bids (special market).

(3) Usual market prices are those regularly demanded by the relevant supplier for this service during competition and which are accepted.

(4) If there is a usual price for a service on the general market, this price shall be applicable within the meaning of paragraph (1) above. If there is no usual price for this service on the general market, it shall be assumed that the price at which the service is offered on a particular market is the usual market price if established by way of competition.

(5) Where contracts are for services which, given similar conditions, are essentially comparable with marketable services, prices shall be reduced or may be increased to the extent that this is warranted by variations from the marketable services.

(6) The public customer shall be granted the same advantageous terms and conditions – especially quantity and value discounts, cash discounts and special terms of delivery – as would under identical conditions normally be granted to non-public customers.

(7) Prices shall be lower than or may exceed those according to paragraphs (1), (5) and (6) above if this is warranted in view of the specific cost situation of the contract.

Article 5 Cost Prices

(1) Cost prices shall be based on the reasonable costs incurred or expected to be incurred by the contractor and shall be used only in exceptional cases

1. where prices cannot be determined according to Articles 3 and 4 above, or
2. where there is a shortage or a limited number of bidders and, as a result, pricing according to Article 4 above is more than insignificantly affected.

(2) Where the customer and the contractor disagree as to whether conditions as specified in number 2 of paragraph (1) above exist, a decision shall, on application, be made

1. by the Federal Ministry for Economic Affairs and Energy if the shortage or the restraint of competition affects or may affect prices in more than one Land,
2. in all other cases, by the competent pricing agency at the location of the contractor.

(3) Where the nature of the contract permits, a cost price calculation shall be submitted together with the bid.

(4) Where contracts for identical services are awarded to several contractors under cost price terms, identical prices shall, as a rule, be agreed if conditions are identical. Services shall be considered identical if type, quantity, delivery period and terms of delivery and payment are largely the same. In determining the prices, the cost prices of those companies to which contracts are to be awarded or have been awarded shall be considered. The price finally established shall be based on the cost price of an efficient company.

(5) In awarding contracts in follow-up to a contract awarded under cost price terms (follow-on contracts), it shall in each case be determined whether prices in accordance with Article 4 can be agreed.

(6) The agreed cost prices may be

1. fixed cost prices or target cost prices according to Article 6 below.
2. cost reimbursement prices according to Article 7 below.

Article 6 Fixed Cost Prices and Target Cost Prices

(1) Whenever possible, cost prices shall be agreed as fixed cost prices.

(2) Fixed cost prices shall be determined on the basis of cost calculations and shall be fixed upon contract conclusion or immediately afterwards.

(3) Where a fixed cost price cannot be established, the contract shall be made on the basis of a provisional cost price (target cost price). Prior to termination of production, as soon as the basic factors bearing on the cost calculation can be assessed, the target cost price shall be replaced by a fixed cost price, if possible.

Article 7 Cost Reimbursement Prices

(1) Cost reimbursement prices shall only be allowable where prices cannot otherwise be determined. A maximum reimbursable amount may be established by mutual agreement for all or part of the costs.

(2) Where the nature of the contract permits, agreements on cost reimbursement prices shall provide that for certain cost categories fixed rates shall be established.

Article 8 Determination of Cost Prices

If cost prices (Articles 5 to 7 above) are agreed, the LSP pricing guidelines (Guidelines for Pricing on the Basis of Cost) attached as Annex shall be observed.

Article 9 Auditing of Prices

(1) The contractor shall provide evidence on how the price has been established if requested to do so by the competent pricing and price control agencies. The records produced shall show that the price is allowable under the provisions of this Regulation. Unless other provisions stipulate a longer period, these records shall be kept for at least 10 years starting on the day of payment owed by the public customer for the contractual services.

(2) The competent pricing and price control agencies are entitled to verify whether the provisions of this Regulation have been complied with. The contractor and the persons responsible for the management of the company shall furnish all information required for this purpose.

(3) The competent pricing and price control agencies will, at their discretion, decide whether an audit pursuant to paragraph (2) sentence 1 is performed.

(4) The competent pricing and price control agencies may examine the contractor's records, have copies, printouts, photographs, electronic data and files taken of or extracts made from these records and inspect the contractor's plants.

(5) If the competent pricing and price control agencies cannot determine or calculate the contractor's reasonable costs pursuant to Article 5 (1) above, they may estimate them. An estimation may in particular be made if the contractor is not able to provide sufficient explanations on his data, if he refuses to provide information at all or if his records are no longer available and the minimum period for keeping documents pursuant to paragraph (1) sentence 3 was not complied with. The estimate shall take into account all circumstances relevant for the estimate. For the estimation, the competent pricing and price control agencies may use contractor data already available from other audits performed pursuant to paragraph (2) sentence 1. The competent pricing and price control agencies may include reasonable safety margins when estimating the contractor's costs. If the contractor's costs can only be estimated within a certain framework, this framework may be exhausted at the expense of the contractor. If the competent pricing and price control agency is unable to estimate the costs in whole or in part, it may set the contractor's cost items concerned to zero.

Article 10 Determination of the Adequacy of Cost Prices by Public Customers

(1) The public customer, in consultation with the competent pricing and price control agency, is entitled to determine whether a cost price complies with the provisions of this Regulation if it has been authorized to do so generally or in a particular case by the Federal Ministry for Economic Affairs and Energy. Article 9 paragraph (2) sentence 2 and paragraph 3 shall apply accordingly. As far as fixed cost price contracts are concerned, such an examination shall be permissible only between the time of submission of the bid and the time when the contract is concluded. The same shall apply to target cost price contracts and cost reimbursement price contracts as far as agreed fixed rates for certain cost categories are concerned.

(2) The demand on the contractor due to examinations according to paragraph (1) above should be in reasonable proportion to the economic significance of the performance from both the customer's and the contractor's point of view.

(3) Where the contractor so requests, the competent pricing and price control agency shall participate in the examination of the cost prices.

(4) In case of disputes between the customer and the contractor regarding the result of the examination, they shall first try to reach an amicable settlement on a mutually acceptable cost price. If no settlement can be reached, the competent pricing agency at the location of the contractor shall establish the cost price at the request of either party.

(5) and (6) (deleted)

Article 11 Violations

Violations against the provisions of this Regulation shall be punishable in accordance with the penal provisions of the Act to Simplify the Law Relating to Economic Offenses (Economic Offenses Act) as of 26 July 1949 (WiGBl, p. 193) as amended by the Act of 25 March 1952 (BGBl, part I, p. 188)/17 December 1952 (BGBl, part I, p. 805).

Article 12 Entry into Force

(1) This Regulation shall enter into force on 1 January 1954.

(2) This Regulation in the version applicable until 31 March 2022 shall apply to public contracts awarded prior to 1 April 2022.

(3) (deleted)

(4) (deleted)

Concluding Caption

The Federal Minister for Economics

Annex: LSP pricing guidelines

For text refer to: PreisLS