

## Containers for waste and recyclables made of plastic

### Proposal for a price adjustment clause as part of the contractual terms and conditions and for the evaluation of tenders (criteria for deciding on the contract award)

#### Contractual terms and conditions: Price adjustment clause

##### Introduction - legal basis:

The contracting authority may specify price adjustment clauses in the contractual terms and conditions. The price adjustment clause is part of the contractual terms and conditions, which is prescribed unilaterally by the contracting authority. Bidders are not entitled to change or cancel the contractual terms and conditions (and therefore also the price adjustment clause); an amendment of the tender documents leads to the exclusion of the tender (section 57 para. 1 no. 4 VgV).

##### The practical implementation: Proposal for a price adjustment clause

##### Price adjustment clause

The offered prices are valid until the expiration of three months after the submission of tenders, but at least until the expiration of the binding period. Any party may, after that date, make an adjustment to the tender prices in accordance with the following provisions:

##### Material costs index for HDPE

Unless the parties have agreed otherwise in individual contracts, the cost fraction of the HDPE at the time of the submission of tenders amounts to

- 55% of the tender price in 2-wheel containers
- 45% of the tender price in 4-wheel containers.

Decisive for determining a change in these costs is the index for HDPE, injection moulding quality, to be found on the website of the Gütegemeinschaft Abfall- und Wertstoffbehälter e.V. [www.ggawb.de](http://www.ggawb.de)

##### Producer price cost index

For a further 15% of the costs, the index of producer prices of industrial products (domestic sales), petroleum products group, diesel fuel, bulk consumer levy, currently no. 175; published by the Federal Statistical Office, technical series 17, part 2.

##### Personnel cost index

The personnel costs at the time of the submission of tenders: 10% of the tender price at AWB 2-wheel, 15% of the tender price at AWB 4-wheel.

Decisive for all changes in this cost group are the remuneration rates per month of remuneration group 5 from the Federal Collective Bargaining Agreement for the Bundesverband der deutschen Entsorgungswirtschaft e.V. (Federal Association of German Waste Management) (BDE), published by the Federal Statistical Office in the official online rate database, branch of industry: 370, nationwide, for recycling and waste management in the Federal Republic of Germany. With the monthly earnings, all other personnel-related expenses (e.g. holiday, holiday pay, one-off payment - also due to lack of pay increases - annual special payment, asset-creating

contributions, collectively agreed working hours) are balanced. The starting point is the currently valid remuneration rates.

#### **Energy costs**

These amount to 15% of the tender price at the time of the submission of tenders. Decisive is the producer price index industrial products, Germany, goods list GP 2009, electric current special contract customers.

#### **Price adjustment in event of index changes**

Either party may request an adjustment to the agreed contract price if the listed price/cost indices have undergone a change of more than 5% in total compared to the time of the submission of tenders or the last date of adjustment of the contract price. The request for adjustment can then be asserted in writing, by fax or e-mail until the last working day of a month and shall then apply to all deliveries that are made as per agreement from the 1st of the month after next.

The following formula shall be used to determine the price amendment:

#### **2-wheel AWB**

$$\text{tyre} = P \cdot 0.05 + P \cdot (0.55 \cdot m/M + 0.15 \cdot k/K + 0.10 \cdot l/L + 0.15 \cdot e/E)$$

#### **4-wheel AWB**

$$\text{tyre} = P \cdot 0.1 + P \cdot (0.45 \cdot m/M + 0.15 \cdot k/K + 0.15 \cdot l/L + 0.15 \cdot e/E)$$

#### **This therefore means:**

tyre: New price after price adjustment

P: Current contract price

m: Material costs index HDPE at the time of the request for the adjustment

M: Material costs index HDPE at the time of the submission of tenders

k: Producer price cost index at the time of the request for the adjustment

K: Producer price cost index at the time of the submission of tenders

l: Remuneration at the time of the implementation of the request for the adjustment

L: Remuneration at the time of the submission of tenders or last adjustment of the remuneration price

e: Energy cost index at the time of the request for the adjustment

E: Energy cost index at the time of the submission of tenders

If the costs of the bidder exceed those of the time of the submission of tenders or the last date of adjustment under this point, the circumstances beyond which the bidder had no influence and that they could not include in their calculation, in particular by introducing new or adapting existing legal/regulatory charges/fees/taxes, by more than 10%, the bidder is entitled to request that the contracting authority starts contract negotiations for the purpose of adjusting the tender prices in line with the changed cost situation.

## Evaluation of the tenders/contract award criteria

### Introduction - legal basis:

For procurement procedure above of the EU threshold value (currently: 209,000 EUR net):

#### Section 127 GWB contract award

- (1) The contract will be awarded to the most economical tender. The basis for this is an evaluation on behalf of the contracting authority as to whether and to what extent the tender meets the specified contract award criteria. (...)\*
- (2) (...)
- (3) The contract award criteria must be related to the subject of the contract. This relation must also be accepted if a contract award criterion relates to processes related to the production, provision or disposal of the service, to the trade in the service or to another stage in the service life cycle, even if these factors do not apply to the material properties of the object of the contract.
- (4) The contract award criteria must be set and determined in such a way as to ensure the possibility of effective competition, not to award the contract on an arbitrary basis and to enable an effective review of whether and to what extent the tenders fulfill the contract award criteria. (...)
- (5) The contract award criteria and their weighting must be included in the contract notice or the tender documents.

#### Section 58 VgV contract award and contract award criteria

- (1) The contract is awarded in accordance with section 127 GWB on the basis of the most economical tender.
- (2) The most economical tender is calculated on the basis of the best price/performance ratio. In addition to the price or the costs, qualitative, environmental or social contract award criteria may be taken into account, in particular:
  1. the quality including the technical value, aesthetics, expediency, accessibility of performance, in particular for persons with disabilities, its compliance with requirements for design for all, social, environmental and innovative characteristics, as well as distribution and trade conditions,
  2. (...),
  3. the availability of customer service and technical assistance, as well as delivery conditions such as delivery date, delivery procedures and delivery and execution deadlines.
 (...)
- (3) The contracting authority shall indicate in the contract notice or in the tender documents how it will weight the individual contract award criteria in order to determine the most economic tender. (...)
- (4) For the proof of whether and to what extent the offered services meet the required contract award criteria, sections 33 and 34 shall apply accordingly.
- (5) The contract award decision should normally be taken by at least two representatives of the contracting authority.

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\* Note: (...) replaces passages in the legal text that are not relevant here.

**For procurement procedure below of the EU threshold value (currently: 209,000 EUR net):**

**Currently still: section 18 VOL/A contract award:**

- (1) The contract shall be awarded to the most economical tender, taking into consideration all circumstances. The lowest tender price alone shall not be the decisive factor.
- (2) (...)
- (3) (...)

**Future: section 43 UVgO contract award:**

- (1) The contract shall be awarded to the most economical tender.
- (2) The most economical tender is calculated on the basis of the best price/performance ratio. In addition to the price or the costs, qualitative, environmental or social contract award criteria may be taken into account, in particular:
  1. the quality including the technical value, aesthetics, expediency, accessibility of performance, in particular for persons with disabilities, its compliance with requirements for design for all, social, environmental and innovative characteristics, as well as distribution and trade conditions,
  2. (...),
  3. the availability of customer service and technical assistance, as well as delivery conditions such as delivery date, delivery procedures and delivery and execution deadlines.(...)
- (3) The contract award criteria must be related to the subject of the contract. This relation must also be accepted if a contract award criterion relates to processes related to the production, provision or disposal of the service, to the trade in the service or to another stage in the service life cycle, even if these factors do not apply to the material properties of the object of the contract.
- (4) (...)
- (5) The contract award criteria must be set and determined in such a way as to ensure the possibility of effective competition, not to award the contract on an arbitrary basis and to enable an effective review of whether and to what extent the tenders fulfill the contract award criteria.
- (6) The contracting authority shall indicate in the contract notice or in the tender documents how it will weight the individual contract award criteria in order to determine the most economic tender. (...)
- (7) For the proof of whether and to what extent the offered services meet the required contract award criteria, section 24 shall apply accordingly.
- (8) The contract award decision should normally be taken by at least two representatives of the contracting authority.

<b>The practical implementation: Proposal for an evaluation matrix</b>
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In principle, the criteria may be determined by the contracting authority within the aforementioned framework at its own discretion. The weighting is also at the discretion of the contracting authority. As a

"rule of thumb", the following shall apply to the practice: The price should have a weight of at least 30%.

All evaluation criteria shall be communicated to the bidders in the contract notice and the tender documents. The tender documents should include an evaluation matrix detailing and weighting the criteria. The evaluation process should be made transparent.

Bidders should be informed in detail in advance of the criteria, its weighting and also the evaluation process, so that they can be prepared when preparing their tenders. In other words: The bidders will thereby be able to make an "optimal offer".

Such an evaluation matrix could, **for example**, look as follows (or similar):

Criterion	Weighting	Maximum achievable Number of points
Price (gross)	x %	(0 to) 100
Sustainability a)	x %	(0 to) 100
b)	x %	(0 to) 100
Delivery time	x %	(0 to) 100
Barrier-free systems	x %	(0 or 0 to) 100
CO2 neutrality	x %	(0 or) 100
Noise reduction	x %	(0 to) 100
Spare parts costs	x %	(0 to) 100

#### Explanation of the evaluation matrix/evaluation process:

##### "Price" criterion

The tender that shows the lowest gross price receives the highest score. All other tender prices are set individually in relation to the lowest price. You will receive fewer points in the ratio as they differ from the lowest price. A tender that deviates 100% from the lowest price receives zero points.

##### "Sustainability" criterion

a) The tender that indicates the highest percentage of recyclate receives the highest score. All other tenders are individually related to the tender with the highest percentage of recyclate. You will receive fewer points in the ratio, as they differ from the tender with the highest percentage of recyclate. An offer deviating 100% from the highest percentage of recyclate will receive zero points.

b) The tender that identifies the most sustainable container with the least possible use of raw materials receives the highest score. All other tenders are set individually in relation to the tender with the container, which indicates the lowest possible use of raw materials. You will receive fewer points in the ratio, as they differ from the tender with the container that indicates the lowest possible use of raw materials. A tender that deviates 100% from the container that has the lowest possible use of raw materials receives zero points.

#### "Delivery time" criterion

The tender that indicates the shortest delivery time receives the highest score. All other tender delivery times are set individually in relation to the shortest delivery time. You will receive fewer points in the ratio, as they differ from the shortest delivery time. A tender that deviates 100% from the shortest delivery time receives zero points.

#### "Barrier-free systems" criterion

The tender that indicates an accessibility one-hand operation or the lowest waste disposal height of the AWB receives the highest score. All other tenders are individually related to this specification. You will receive less points in the ratio, as they differ from the specification. A tender that deviates 100% from the criterion of one-hand operation (i.e. two-hand operation) or the lowest waste disposal height receives zero points.

#### "CO2 neutrality" criterion

The tender that identifies CO2 neutral products receives the highest score. A tender that deviates 100%, so no CO2 compensation is evident, receives zero points.

#### "Noise reduction" criterion

The tender that indicates the lowest guaranteed noise level (expressed in dB(A) receives the highest score. All other tenders are set individually in relation to the lowest guaranteed noise level. You will receive fewer points in the ratio, as they deviate more than from the lowest guaranteed noise level. A tender that deviates by more than 100% receives zero points.

#### "Spare parts costs" criterion

The tender that indicates the lowest total price of the advertised spare parts package receives the highest score. All other tenders are set individually in relation to the lowest total price. You will receive fewer points in the ratio, as they deviate more than from the lowest tender. A tender that deviates by more than 100% receives zero points.

The points achieved by a tender for the individual criterion are then multiplied by the factor (weighting).

Then, for each tender, the points scored for both criteria are added together. The tender with the highest number of points is awarded the contract.