

Information on the federal government's right to inspect prices and perform price audits

The following information is intended to provide answers to the key questions related to the federal government's right to inspect prices and perform price audits, and is aimed at procurement offices and requesters (contracting parties) and audited companies (contractors).¹

"The bottom line of procurement is putting overall cost-effectiveness first! The right to inspect prices and perform price audits should be the final resort for ensuring economical procurements."

Michel Huissoud, Director of the Swiss Federal Audit Office (SFAO)

1. What is meant by the terms "right to inspect prices" and "price audit"?

Where orders are awarded directly, the lack of competition makes it difficult to readily assess how appropriate the prices offered are. At any rate, the federal government runs the risk of paying too high a price for such services.

To redress the lack of competition, the Public Procurement Ordinance (PPO) allows the contracting party to build into the contract with the contractor the right to inspect the latter's prices (review the calculation).

Under the right to inspect prices contained in the contract, the contractor undertakes to do two things: to grant the appointed price auditors access to price calculations if they so request and to provide them with all the necessary documentation and information at no extra charge. The right of inspection is exercised by means of a price audit. This may either confirm a price or result in a price reduction. A price increase is not possible.

Right to inspect prices with regard to fixed-price orders: in the case of fixed-price orders, it is normally the preliminary cost calculation that is audited. Right to inspect prices with regard to orders costed on a time and material basis: in such cases, any meaningful price audit can be conducted only after the goods/services have been provided. This requires a right to inspect the final price calculation.

2. Where is the price audit regulated?

Unlike other countries, there is no pricing regulation at the legislative level in Switzerland. Therefore, the right to conduct a price audit always needs to be stipulated beforehand in a contractual agreement between the contracting party and the contractor.

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According to Article 24 of the PPO: "In the absence of competition, the contracting authority may agree with the tenderer on a right to inspect the calculation if the value of the contract is worth CHF 1 million or more."

The Federal Department of Finance (FDF) has issued implementing provisions for the Confederation's procurement offices (FDF directive of 18 December 2020 on the right to inspect prices for federal procurements).

3. What is the objective of a price audit?

The overriding objective of the right to inspect prices is preventive in nature!

The purpose of a price audit is to review whether the contractor, in the absence of competition, has included costs, risks and/or profit margins that could not be factored in if the same or similar services were being provided under competitive conditions. It is not, however, a question of contesting the contractor's right to earn a fair or customary profit.

4. Who conducts price audits?

The right to inspect prices takes the form of an audit of the contractor's prices. Price audits can be conducted by federal internal audit units or the SFAO as price auditors. In this capacity, they endeavour to conduct price audits according to uniform methods.

5. What is reviewed during a price audit?

The aim of the price audit is to review the contractor's financial and operating accounting system and the cost calculation based on it. The calculation shows the total production costs in the customary breakdown for the sector, as well as the risk premia and profits. There is no requirement to prepare a calculation specifically for the price audit.

The audit of the individual components of the price calculation focuses on the following assessment criteria:

- Traceability of the calculation parameters (audit trail)
- Equal treatment of customers and orders in terms of the calculation model applied (most favoured principle)
- All components of the calculation must be well-founded (clarity and truth)
- Compliance with the originator principle (cause-based allocation of costs)
- Cost deviations must be substantiated and documented.

6. What are the outcomes of a price audit?

Price audit without price adjustment: The price auditors confirm to the contractor that the price audit has been conducted and communicate the signed audit findings to the latter without disclosing calculation details.

Price audit with price adjustment: The signed audit findings constitute a binding proposal by the contractor to carry out, together with the contracting party, the measures detailed in the audit protocol. The agreed price reduction may be implemented in various ways, including an addendum to the contract, a credit note, an offset against future payments, etc.

7. What are the stages of a price audit?

For the purpose of obtaining advance information, a preliminary discussion is held with the contracting party, during which the latter's commercial and technical officers outline the transaction. The points to be audited can be coordinated, questions clarified and the documents necessary for the price audit stipulated and handed over. Prior to the audit, the price auditors will also coordinate with the contractor (subject of the audit, duration, team, necessary documents, preparation and sequence of price audit activities).

In the course of an initial discussion, the price auditors explain the procedure to the contractor and, in particular, the objective of the price audit. The contractor will present the company, the goods/services to be audited and the accounting system. The cost calculation represents the starting point and must be duly signed by the contractor. It serves as the basis for audit actions.

During the audit actions carried out onsite at the contractor's premises, the price auditors assess the individual revenue and cost elements of the calculation. They gear their audit programme to the calculation received. The review of cost elements comprises spot checks and is determined by risk considerations. The price auditors review clearly quantifiable audit fields as well as price elements which leave scope for interpretation (e.g. risks and profit margins). The contractor will be appropriately informed of the status of activities in the course of the audit. As a rule, onsite audit activities last one to two weeks.

During the discussion of the findings, the price auditors summarise the audit procedure and the points reported in the audit findings. These summary findings must be duly signed by the price auditors and the contractor. Even if agreement cannot be reached with the contractor, the audit findings must nevertheless be signed. An indication is to be made of which audit findings have been accepted and which are being contested. Following the discussion of the findings, the audit findings are sent in writing to the contractor for comment. The period for comments is usually 10 days. The audited company's comments are part of the audit findings.

If, by way of exception, the price auditors make recommendations regarding contract execution to the contracting party, these will be explained and addressed during a final discussion.

8. Who is responsible for implementing any price reduction?

The price auditors themselves do not make any contractual amendments together with the contractor. The contracting party is responsible for acting on the findings of the price audit together with the contractor.

9. What happens if the company does not agree with the audit findings?

The signed audit findings, together with particulars of the contested price reduction and the contractor's comments, will be sent to the contracting party. After consultation with the price auditors and the contractor, the contracting party will assess the material facts and decide on the next steps. As a final option, recourse may be had to the courts.

The contracting party will notify the price auditors of the outcome of any measures taken in connection with a contested price audit. Departures from the price audit findings, together with the written decision of the relevant Director's office, must be documented comprehensibly.

10. Is company data treated confidentially?

Price audits are fiduciary actions. The information and documents received from the contractor will – insofar as they constitute business secrets – be treated confidentially. This also applies to details of how the audit findings were arrived at, and to data and documents classified by the audited company as confidential. The documents will be securely stored by the price auditors. The contracting party will receive only such information as is necessary in the event that a price adjustment needs to be made.

If – as an absolute exception – a court needed to be called on to issue a ruling on the price reduction, it would be sent all the information and documents necessary to reach a decision.