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| **Question** | **If the answer is ‘no’** |
| Is the criterion directly related to the subject matter of the tender? | The criterion is certainly impermissible. |
| Is the criterion distinctive in relation to the tender offers? | The criterion has no added value and can be misleading. |
| Is the criterion clear? | The criterion is contrary to the principle of transparency and is therefore prohibited. |
| Is the contracting authority (hereafter: CA) willing and able to check whether theoffers meet the criterion? | The criterion is certainly impermissible. |
| Is the degree to which the criterion is met sufficiently objectivedeterminable? | The criterion may conflict with the principle of transparency. For example, the criterion "Whether your way of working suits us" is Probably unacceptable. Nevertheless, in court is accepted that a certain degree of subjectivity is inevitable when it comes to assessing a tender offer. |
| Is the criterion relevant for (for example) the quality? | It is not forbidden, but unwise to use this criterion. After all, a tender offer can be chosen as winner on improper grounds, while other offers are in fact more advantageous. |
| Can be described by a tenderer with reasonable efforts how he fulfils the wish? | The criterion can be disproportionate and therefore unacceptable. In any case, it is not wise to demand that tenderers make an excessive effort for the preparation of their tender offer. When the efforts required for drawing up a good offer are relatively large, It is possible that only the companies that have a lot of free time on their hands (and are maybe not the most suitable ones) have the best chances of winning the tender. |
| Is it possible to assess the criterion within a reasonable time? | The use of the criterion is not prohibited, but when the chance of a good judgment requires a disproportionate high effort, the chances on errors are unacceptably high. This criterion also yields high transaction costs for the contracting authority. |
| Is it possible to devise in advance what is important to achieve a good score on thecriterion? | If afterwards on the basis of the received tenders the framework for the assessment of the tender offers is established, there is a risk of arbitrariness. When it in no way can be indicated in advance how the criterion will be assessed,the criterion is unacceptable. |
| Is the criterion formulated in such a way that some potential tenderers have no chance in advance? | The criterion may be contrary to procurement law: when there are justified grounds, this disguised form of discrimination are permissible, but the increased chance of disputes however can be a reason not to use the criterion. |
| Does the criterion relate to an important quality aspect for the CA?  | Leave out the criterion, limit to the main issues. |
| Is the CA able to (have) test (ed) whether the contract is fulfilled according to the criterion? | It is not forbidden, but unwise to use this criterion. 'Decent' tenderers can be disadvantaged by it by behaviour of indecent tenderers. |

**With thanks to Tsong Ho Chen**