

# NON-PRICE CRITERIA FOR EVALUATING OFFERS IN POLAND AND THE EUROPEAN UNION

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## NON-PRICE CRITERIA FOR EVALUATING OFFERS IN POLAND AND THE EUROPEAN UNION

### ABSTRACT

**The purpose of the article.** An important element that influences the effectiveness of public procurement is the multi-criteria offer evaluation model. Moving away from comparing offers only in terms of their price, a single-criteria model, allows you to choose a more expensive solution, which may turn out to be a cheaper one after many years of use. The impact of non-price criteria also goes beyond quantifiable economic effects and may stimulate pro-ecological and pro-social behavior of entities applying for public procurement. Due to legislative changes in the application of non-price criteria, a study was carried out to determine the preferences of contracting entities from the European Union member states in this respect. The study was extended to identify the types of non-price criteria used by domestic contracting entities.

**Methodology.** Due to the functionality limitations of the European database of tender announcements, part of the work used data from a random sample. Basic statistical measures, estimation and the parametric Student's t-test were used for the analysis.

**Results of the research.** Changes in the structure of the offer evaluation models used were identified and the preferences for using the multi-criteria model were compared between the EU member states whose accession date was before 2004 and others. Statistically significant differences were found in the use of non-price criteria in countries that were incorporated into the EU structures before 2004 and in other countries. The analysis shows that a longer presence in the EU structures increases the use of non-price criteria only in the area of supplies and services. On the domestic market, the change in legislation that took place in 2021 did not eliminate the system pathology consisting in the introduction of dead non-price criteria by contracting entities.

**Keywords:** public procurement, efficiency, offer evaluation criteria, competitiveness.

**JEL Class:** K49, G18, H12, H57.

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## INTRODUCTION

The European public procurement market is regulated by implementing the guidelines contained in the EU Directives into the laws of member states. Due to the nature of the provisions introduced therein, there is a great variation in the solutions of individual member states introducing these regulations. These differences come down not only to differences in the legal framework covering one or many legal acts, but also concern specific solutions, e.g., diversity in the approach to the use of non-price criteria and the definition of procurement procedures. While a number of restrictions have been set in terms of determining tender procedures, especially in the case of a possibility of using closed competition modes, in terms of offer evaluation criteria, Member States have been left with wide opportunities to create internal legal regulations. Art. 67 section 2 of Directive 2014/24/EU of the European Parliament and of the Council provides that “*Member States may provide that contracting authorities may not use price alone or cost alone as the sole award criterion*”. A wording identical in content is introduced into the EU legal order by Directive 2014/25/EU of the European Parliament and of the Council in Art. 82 section 2. This decision-making freedom also translates into the possibility of any approach to the use of non-price criteria under national legislation.

The aim of the work is to identify preferences in the use of non-price criteria for the evaluation of offers, both by domestic and EU contracting entities, with particular emphasis on the period of operation of the new Public Procurement Law.

### 1. EFFICIENCY IN PUBLIC PROCUREMENT

The administrative rules for spending public funds are based on the principles of equal treatment of contractors, fair competition, proportionality, efficiency, transparency and impartiality (Andała-Stępkowska and Bereszko, 2018: 44). Their introduction results from the reduced concentration of public entities on how to spend financial resources, which may lead to “*waste of resources*” (Brzozowska, 2011: 20). In practice, these principles can be reduced to just one, efficiency. Procurement restricting competition that violates the principles of fair competition and proportionality, as well as those that violate the principles of transparency and impartiality and lead to the intentional selection of a contractor will not be effective. The importance of efficiency in public procurement has been recognized by the EU and national legislator from the beginning of introducing administrative rules for spending public funds.

In each amendment to the applicable rules for spending public funds, attempts are made to improve efficiency. The legislator's difficulty in improving the effectiveness of public procurement is the lack of objective tools that can measure this effectiveness, which is partly due to the lack of widespread use of quantitative methods in the analysis of the public procurement system (Starzyńska, 2016: 456). The first element on the way to improving efficiency is to limit quasi-competitive modes or modes that completely exclude competition. It is indisputable that awarding a contract to a contractor who did not have to prepare an offer taking into account the proposals of market competition is a suboptimal solution, which may include an additional so-called "corruption margin" (Burguet and Yeon-Koo, 2004: 55). Additionally, such a solution may lead to market destruction by eliminating contractors who have been excluded from participating in public procurement. This type of behavior may also result in increased social costs, both by selecting a more expensive contractor and by partially extinguishing the activities of contractors excluded from the public procurement market. For this reason, both in the EU Directives and in national legislation, the possibility of applying competition-restricting procedures is strictly established. Reducing closed modes has a direct impact on the efficiency of public procurement.

The second issue related to efficiency is the contractor of the public procurement, who should be reliable and able to complete the order with the quality indicated by the Ordering Party. An unreliable contractor may not complete the order on time, the implementation may have defects and the final investment completion date may be extended by even many years. Depending on the type of investment, failure to complete the investment on time may result in additional social costs. In case of large public investments, public interest is more focused on the investment implementation time than on the costs. An example may be the withdrawal from the contract with the General Directorate for National Roads and Motorways of the Chinese company COVEC, which delayed the construction of part of the A2 motorway, or the withdrawal from the construction of the city stadium in Wrocław (in connection with the UEFA-EURO 2012 European Football Championship tournament) by Mostostal Warszawa. In each of the above-mentioned cases, in order to complete the investment, the Ordering Party was forced to conclude a new contract in a closed manner. As a consequence, the unreliability of the contractors resulted in the need to repeat the award of the contract due to the deadlines, in a closed mode, additional costs and delays in the execution of the contract. For this reason, the choice of a contractor who guarantees timely completion of the investment is very important. At the same time, the subjective criteria established by the Ordering Party should enable access to the contract for a wide range of contractors. Legislative practice shows that as the national public procurement system operates

over time, the legislator expands access to the public procurement market, enabling the participation of contractors who, in the original version of the Public Procurement Law, hereinafter referred to as „PZP”, (Journal of Laws 2004 No. 19 item 177), would not have met the subjective conditions for participation in public procurement proceedings. Introduction in art. 118 of the new Public Procurement Law of 2019, hereinafter referred to as „NPZP”, (Journal of Laws 2023, item 1605), the possibility for the contractor applying for the contract to rely on the resources of other entities, regardless of the legal nature of the legal relations between them, in terms of meeting the conditions regarding: technical and professional abilities, financial situation or economic, in practice, it allows access to contracts for contractors who, under the previous legal status, would have been considered unreliable and would have been excluded from participating in the contract. This change was transferred from the repealed Public Procurement Law, in which the amendment act of June 22, 2016 (Journal of Laws 2016, item 1020) introduced Art. 22a. The amendment resulted from the need to implement the provisions of Art. 63 Directive 2014/24/EU. Since the regulations contained in the applicable Directives have not changed, the possibility of using the resources of other entities not directly participating in the order remains. It follows from the above that, according to the EU legislator, expanding the circle of contractors, even to those who do not meet the conditions for participation in the tender procedure, has a greater impact on efficiency than limiting the number of contractors to those whose technical and financial potential meets the requirements of the contracting authority.

The third element affecting efficiency, rarely raised, is related to the time the Ordering Party sets for preparing the offer. Due to the diversity of the subject of public procurement and the related degree of complexity of the order, the time to prepare the offer is difficult to standardize. However, due to the need to specify in the legal regulation the minimum time between the publication of the contract notice and the opening of offers, the legislator was forced to standardize it. It should be noted, however, that our own research conducted in this area from a sample of 500 procedures (simple sampling) in 2022 did not reveal any procedure in which the Contractor anticipated a longer time to prepare the offer than would result from the NPZP. In practice, in the sample examined, approximately 2% of procedures had an extended time for submitting an offer, which resulted solely from procedural necessity, i.e., modification of the tender documentation. The process of preparing an offer will not be the same for an entity participating in the tender on its own, for a consortium, for a Contractor intending to use the resources of another Contractor or for a Contractor using subcontractors. It is also important that the Ordering Party has a specialized unit preparing the offer. In practice, the contractor's lack of time comfort when preparing a complex

offer limits the group of contractors interested in the order, reducing competitiveness in the procedure.

To a limited extent, it is possible to quantify economic efficiency. Efficiency is determined based on savings in public funds spent. The measure is the ratio of the offer price to the estimated value of the order, which determines the so-called loss rate. The loss index is an intensity indicator resistant to changes in the dynamics of the examined phenomenon, which for economical orders is less than 1 and for non-economical orders greater than 1 and is expressed by the formula:

$$W_{st} = \frac{WN}{WZ}$$

where:

$W_{st}$  – loss index,

$WN$  – price of the selected offer (order value),

$WZ$  – estimated value of the order (gross).

The presented indicator has certain limitations. It works very well in proceedings in which one criterion for evaluating offers, the price, is specified. In the case of a multi-criteria model, the difficulty in determining the loss indicator is the need to recalculate non-price criteria each time in order to determine their value. The task is feasible but requires access to the procurement procedure documentation and is very time-consuming.

The offer evaluation criteria are a very important element influencing the effectiveness of public procurement, and their application, apart from financial efficiency, can stimulate economic efficiency and, in special situations, also the quality of contract execution and implementation (Koch, 2020: 91). At the same time, the use of a multi-criteria offer evaluation model requires special attention from the Ordering Party.

## 2. OFFER EVALUATION CRITERIA

In the national public procurement system, which began functioning with the entry into force of the Public Procurement Act in 1995 (Journal of Laws 1994, No. 76, item 344), the importance of non-price criteria for evaluating offers was not appreciated. We can even point to examples of disciplining contracting authorities who tried to differentiate offers by pointing to non-price criteria. A major role in limiting the tendency to introduce non-price criteria was played by the judgments of the Appellate Institution operating within the public procurement system, which is the National Chamber of Appeal (KIO), established in place of the Arbitration Teams operating under the President of the Public Procurement

Office. It should be noted that the very initiation of the appeal procedure by the Contractor was and still is associated, depending on the content of the issued judgment, with the extension of the contract award deadline, invalidation of the procedure and initiation of a new one, delegation of the Ordering Party's representatives to the headquarters of the National Chamber of Appeal in Warsaw, and possible costs related to legal representation. To sum up the above, the Ordering Party, wishing to award an order effectively and on time, should formulate the tender documentation in a way that limits the possibility of potential contractors raising objections. The jurisprudence of the National Appeals Chamber has largely influenced the reluctance of contracting authorities to apply post-price criteria. For example, the judgment states that "(...)Therefore, although the contracting authority has far-reaching freedom in the selection of criteria, it cannot use arbitrary and unjustified tender evaluation criteria that are not justified by the specificity of the contract and shape their meaning at an inappropriate level, which results in a preference for specific performers (...)" (KIO 966/12). The provision gives a lot of freedom of interpretation and it is difficult to answer the question whether the offer of a contractor who obtained additional points due to, for example, the weight of a portable device will be the preference of specific contractors. With most criteria, such doubts may arise. In another case, it was stated that "(...)the Ordering Party is the host of the procedure and has the right to create offer evaluation criteria in accordance with its intentions, and in accordance with Art. 91 section 2 of the Public Procurement Law, the mandatory criterion is the price criterion and other criteria which, although not mandatory, may be the subject of a reasoned decision of the Ordering Party (...)" (KIO 376/1). Pursuant to this ruling, the Ordering Party is obliged to document an additional activity, which is the justification of the decision to select a criterion, and implicitly also its importance. In the event of the contractor's reservations regarding the determination of non-price criteria, the validity of their determination by the Ordering Party can only be determined in the appeal procedure.

Most internal and external conditions encouraged the Ordering Party to avoid using a criterion for evaluating offers other than price. Apart from the negative incentives to use non-price criteria, in practice there are no positive incentives to use non-price criteria. The ordering party is responsible for the implementation of its investment plan, the key element of which is deadlines, and supervisory institutions control compliance with the budget discipline. Spending too much or too little in a given financial year is equally reprehensible. Such a situation favors the Ordering Party to use the simplest possible solutions in this evaluation model, which is one criterion, price.

As a result of system analyzes conducted by the Public Procurement Office and other centers, there was a need to make changes to the Ordering Parties' accounts.

In analyzes regarding the public procurement system, the concept of efficiency is recognized in two dimensions: financial and efficiency of the procedure (Nowicki, 2013: 10). By synthesizing them, it can be concluded that effective public procurement is one in which we receive the maximum of primary and secondary benefits for a given amount, or we receive a given benefit for the lowest possible market price (Szymański, 2016: 513). A positive answer to the question whether obtaining an order for the lowest zinc price is effective is possible if it is stated that the remaining, more expensive offers presented identical features in terms of quality, cost-effectiveness, durability, timeliness, etc. Since the subject of the order meeting the above conditions is an exception, not a rule, the legislator noticed the need to introduce systemic changes. This was the result of analyzes conducted since 2010 and focused on the so-called a new approach to public procurement, one of the conclusions of which was the statement that "*the use of price as the only criterion for selecting an offer is a factor that largely discourages contractors from participating in public procurement. This type of orders is always or often rejected by 32% of entrepreneurs active on the procurement market*" (Kowalewska and Szut, 2012: 8). The research confirmed the negative impact of the single-criteria offer evaluation model.

Through publications and training, attempts were made to change the preferences of contracting authorities without introducing any mechanisms encouraging a change in the use of multi-criteria offer evaluation models. As a consequence, in the procurement system the practice of using only one criterion, namely price, has been consolidated (Borowicz, 2011: 19–21). In order to counteract this unfavorable phenomenon, after ten years of operation of the Public Procurement Law, the simplest administrative method was used. The amendment to the Public Procurement Law, which entered into force on October 19, 2014 (Journal of Laws 2014, item 1232), introduced the mandatory formulation of non-price criteria, with minor exceptions.

The comparative analyzes carried out showed that after the introduction of statutory changes in 2015, there was a sharp increase in the share of the multi-criteria offer evaluation model in national public procurement. However, an in-depth analysis showed that the confrontation of administrative orders and habits of contracting entities resulted in the emergence of "*dead non-price criteria*" (Szymański, 2015: 318) which, while fulfilling statutory instructions, do not take any practical part in selecting the most advantageous offer. This practice was also confirmed by the Public Procurement Office, which issued the "Report on offer evaluation criteria" in May 2017 (www4).

Dead criteria include "warranty", "completion date" and "payment date", which, due to the way they are assessed, have a maximum scored value close to the non-scored value. In practice, all contractors declare a maximum warranty period, payment deadline or minimum delivery time. Such a conservative position of the Ordering Parties is partly due to the lack of reliability of some Contractors, who often offered unrealistic conditions for the execution of the order. An example is the offer of several dozen-year warranty periods, which made customers aware of this issue (UZP/ZO/0-3026/06). With the statutory indication of the weight of non-price criteria at the level of 40% or more, pathological phenomena appeared in the public procurement system resulting from the lack of due diligence in determining non-price criteria and their weights. In the case of some orders, the price was disproportionately increased due to, for example, the possibility of shortening the delivery time. It should be added that in the above cases, the introduction of a non-price criterion was solely due to the need to comply with the statutory instruction without conducting a price simulation, taking into account the impact of non-price criteria. The problem was noticed and presented in public procurement magazines (Iwaniec, 2020: 11).

An attempt to limit pathological phenomena resulting from incorrectly used non-price criteria and their weights was the change liberalizing the current position of the legislator introduced in the NPZP of 2019, lowering the obligatory weights of non-price criteria. The new regulations entered the legal order on January 1, 2021.

### **3. ANALYSIS OF CONTRACTING AUTHORITIES' PREFERENCES REGARDING THE APPLICATION OF OFFER EVALUATION CRITERIA**

The work was based solely on direct access to data contained in public procurement notices published in the European Ted database, abandoning other sources that do not provide information about the origin of the data, the methodology of obtaining it and possible measurement error.

Data for the analysis was downloaded from the Ted database (tenders electronic daily), which is the electronic version of the Supplement to the Official Journal of the European Union maintained on the European Commission website (www1). The period covered by the study was 2019–2023. Due to the impossibility of using data from the entire year 2023, this year exceptionally covered nine months from January to September. In order to compare the public procurement markets of Community countries, a number of analyzes were carried out in order to present:

- comparison of European countries in the use of non-price criteria in 2019–2023;

- comparison of European countries in the use of non-price criteria, divided into types of procurement, during the period of validity of the NPZP in Poland in 2021–2023;
- determining preferences for the selection of non-price criteria by domestic contracting entities during the period of validity of the NPZP in 2021–2023.

In order to establish structure indicators describing the share of non-price criteria in European Union countries, documents covering all contracts awarded in the European Union carried out in the years 2019–2023 were used (2023 covers the first nine months).

In order to establish structure indicators describing the share of non-price criteria in European Union countries, divided into types of contracts, documents covering all contracts awarded in the European Union carried out in 2021–2023 were used.

In order to determine the national preferences of contracting authorities, a random sample (simple drawing) was drawn from all contracts awarded by these entities during the period of validity of the NPZP, from January 2021 to the end of September 2023.

Published tender documents downloaded from the Ted database have repeatedly contained errors in which contractors provided contradictory information. Automatic analysis of such documents gives a false picture of the phenomenon under study. This includes, among others: any inconsistency between the field of the EU announcement II.2.5. *Award criteria* and other data contained in the announcement or the Terms of Reference. An example may be a procedure in which only the price is given as a contract award criterion, with information in field II.2.14 that the criteria will be based on a multi-criteria model – price, warranty, completion date (www2). In order to make a precise assessment, the data was verified.

Chart 1 shows the percentage of orders in which the multi-criteria offer evaluation model was used in all EU countries. In the case of Poland, there is a sharp decline in the use of post-price criteria from 2022, which is related to the liberalization of national legal regulations. In 2019–2021, the share fluctuated between 56–55% and in 2023 it decreased to 48%. The analysis indicates that there is a statistically significant difference (p-value <0.001) in the use of single- and multi-criteria models between European countries whose accession date is earlier than 2004 and countries that joined the EU in 2004 and later. The analysis was carried out using the IBM SPSS program. The entered data met the condition for conducting a parametric Student's t-test, which is the normality of the distribution of the variable in the studied subpopulations and equality of variances. The average share of the multi-criteria offer evaluation model for countries with accession before 2004 was 54% and for countries with later accession 34%.

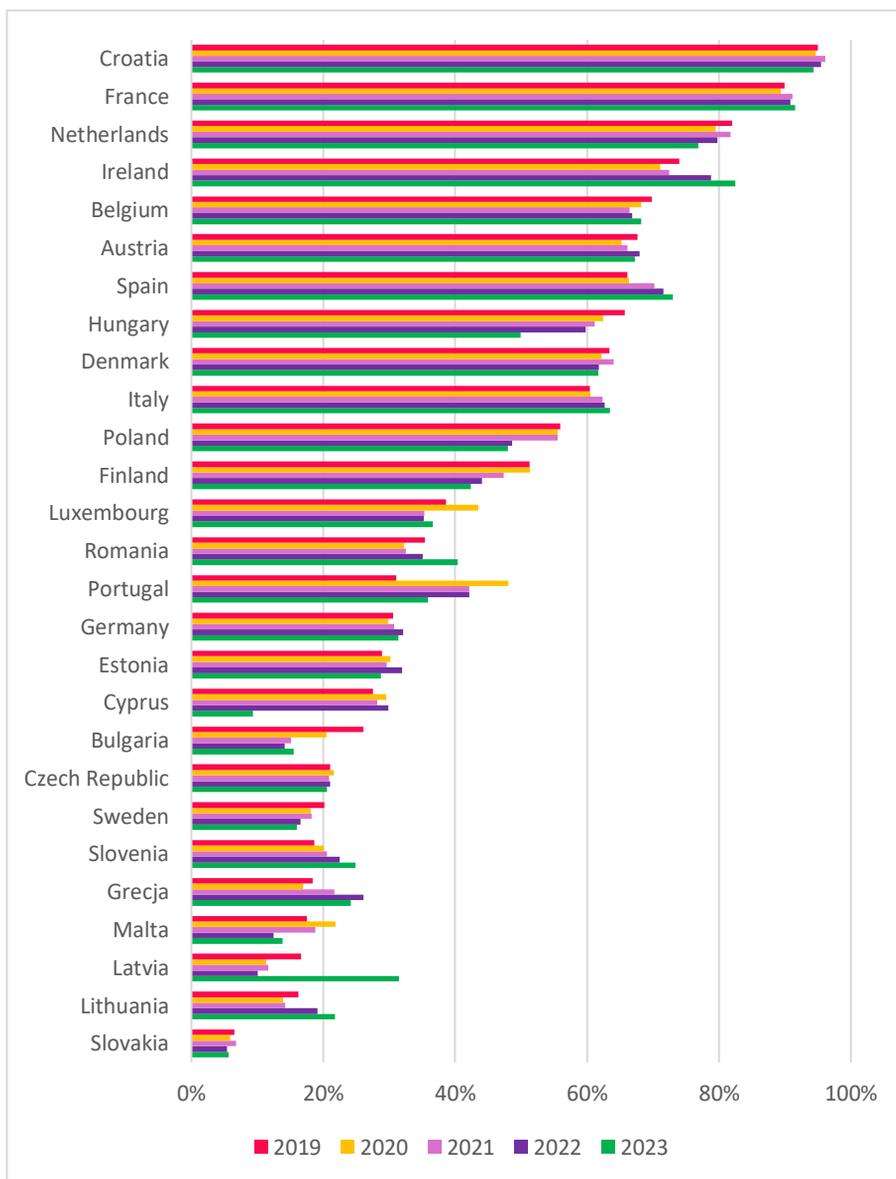


Chart 1. Share of non-price criteria in public procurement in EU countries [in %]

Source: own research.

This allows us to conclude that in the countries that joined the EU structures before 2004, the use of non-price criteria is more widespread than in other Member States.

By narrowing down the research area to the period of validity of the NPZP in the country, the share of non-price criteria was determined for each member state, divided into types of procurement. The first data analysis, presented in Chart 2, shows the use of the multi-criteria model in construction works.

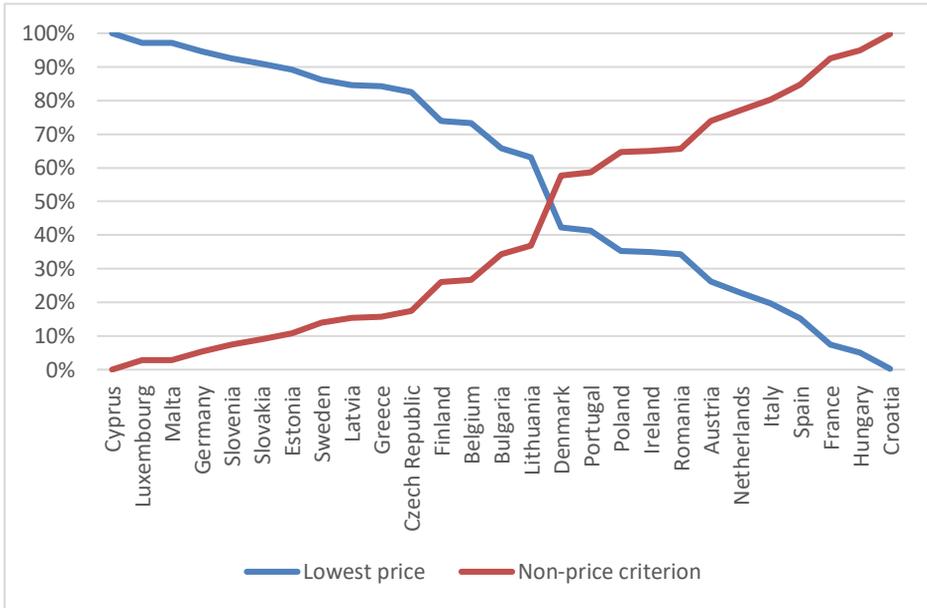


Chart 2. Model for selecting the most advantageous offer for construction works in EU countries in 2021-2023 [in %]

Source: own research.

The average value of the use of non-price criteria in construction works contracts in the examined period was 42%. For countries with accession before 2004, the average share of the multi-criteria model was 45% and for the remaining countries it was 38%. The parametric Student's t-test did not confirm that there is a statistically significant difference (p-value=0.594) between countries with long and shorter membership in the EU. In the field of construction works, there is no differentiation in the preferences of contracting authorities regarding the use of a multi-criteria model of offer evaluation.

A similar analysis of data for services was carried out, presenting the results in Chart 3. A statistical analysis was also carried out, determining the average value of the use of the multi-criteria model, which for services was 51%. For

countries with accession before 2004, the average share of the multi-criteria model was 62% and for the remaining countries it was 40%. The parametric Student's t-test confirmed that there is a statistically significant difference ( $p$ -value = 0.007) between countries with long and shorter membership in the EU.

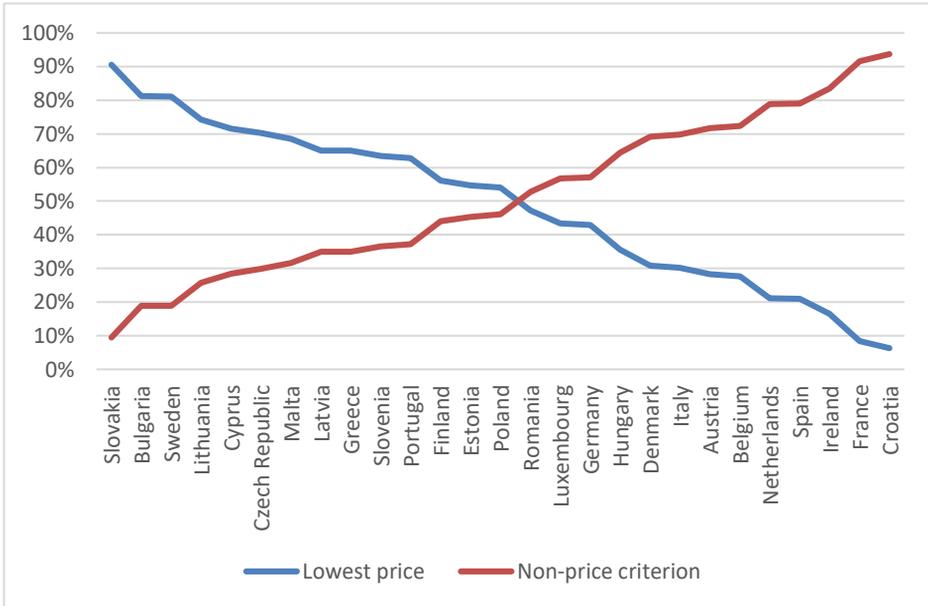


Chart 3. Model for selecting the best offer for services in EU countries in 2021-2023 [in %]

Source: Own research.

Data analysis for deliveries was also performed, presenting the results in Chart 4. The average value of the use of non-price criteria in supply orders in the examined period was 39%. For countries with accession before 2004, the average share of the multi-criteria model was 52% and for the remaining countries it was 25%. The parametric Student's t-test confirmed that there is a statistically significant difference ( $p$ -value=0.004) between countries with long and shorter membership in the EU.

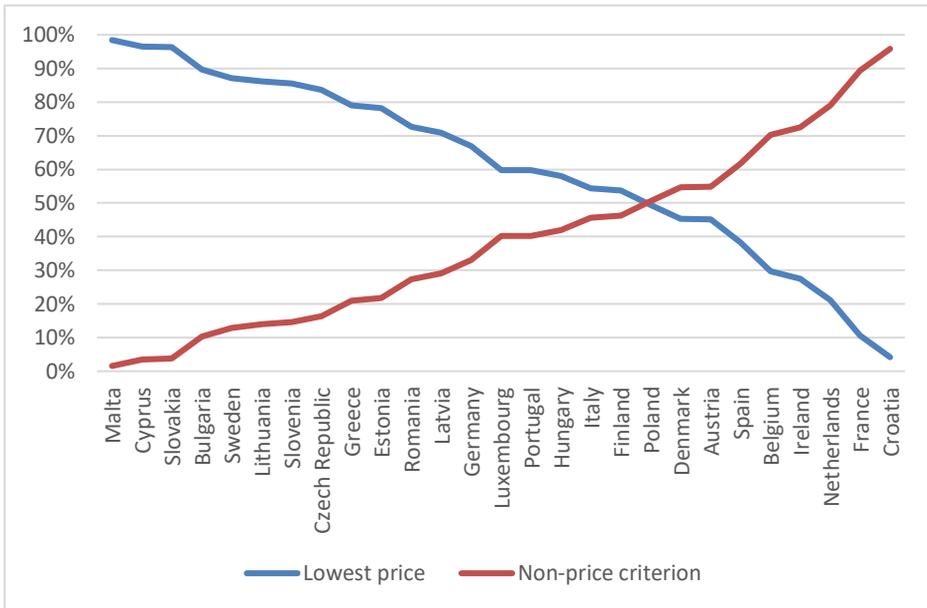


Chart 4. Model for selecting the best offer for supplies in EU countries in 2021-2023 [in %]

Source: own research.

A study was also carried out, based on a 500-item simple sample, that aimed at identifying the types of non-price criteria used during the period when the NPZP was in force. The identification of "dead" non-price criteria was carried out. An example of disclosing proceedings with such a criterion could be an order worth PLN 377 million, in which the only non-price criterion was a warranty with a criterion weight of 40% (www3). In the proceedings, eleven contractors declared the maximum scored warranty period of seven years. The lack of additional points for extending the warranty (from five to seven years) would make it possible to win the tender with an amount lower than PLN 126 million, which would result in a financial loss instead of a profit. This means that the criterion used had only apparent significance. The structure of the selected sample is presented in Chart 5. Data for 2023 covers the first nine months from January to September.

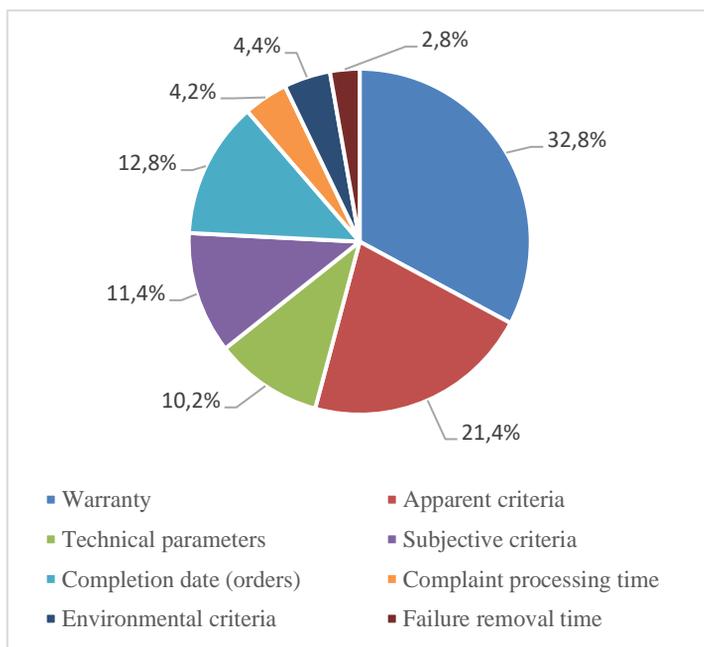


Chart 5. Structure of non-price criteria used by domestic contracting entities in 2021-2023

Source: own research.

Assuming a confidence level of 95%, the confidence intervals for individual criteria are as follows:

- warranty (29%; 37%);
- apparent criteria (18%; 26%);
- technical parameters (7%; 13%);
- subjective criteria (8%; 14%);
- completion date (orders) (10%; 16%);
- complaint processing time (2.2%; 5.7%);
- environmental criteria (2.2%; 5.7%);
- failure removal time (1.5%; 4.5%).

## CONCLUSION

The use of non-price criteria is intended to enable an objective comparison of offers, which, due to the subject of the contract, should not be differentiated by the price itself. This is due to the diversity of the ordered product within the same subject matter of the contract, which, in accordance with the EU legislation, is described using the Common Procurement Vocabulary (CPV). In the light of applicable legal regulations, the use of one criterion for evaluating offers, i.e.,

price, is only possible if the description of the subject of the contract specifies quality requirements regarding its main elements, ensuring qualitative comparability of the solutions offered by contracting entities. This is a very broad formulation and each time the ordering party must define what is the main element of the order, specifying its features. Practically, apart from ordering products which, due to their characteristics, guarantee that the submitted offers will include identical products, such as motor third party liability insurance, the scope of which is defined by law, the need to specify the order description will always arise. However, it should be noted that specifying the description of the subject of the contract more precisely may lead to limiting the group of contractors, which may result in an appeal to the National Chamber of Appeal and the extension of the procedure. Moreover, specifying the description of the subject of the contract in an inflexible manner, compared to non-price criteria, enables the assessment of a product with different, e.g. technical parameters. Typically, in such a case, the ordering party sets the minimum technical parameters accepted by him, which automatically eliminates offers from contractors proposing a more expensive but technically better solution. In each case, the ordering party is obliged to decide whether to clarify the description of the contract or to differentiate offers using non-price criteria. The use of non-price criteria, according to research, is a solution that improves efficiency in public procurement, as opposed to the practice of using one criterion, which is price.

The administrative tools with which the national legislator tried to popularize the use of the multi-criteria model did not bring the intended results. Strong emphasis on the use of non-price criteria resulted in the emergence of pathologies in the public procurement system, which prompted the legislator to liberalize regulations imposing the obligation to use non-price criteria with a minimum share of 40%. There is a visible reduction in the share of contracts with a multi-criteria model after the introduction of the new Public Procurement Law. An analysis of the non-price criteria used indicates that apparent offer evaluation criteria are still used, and the most popular criterion is the warranty. It is positive that the criterion of technical parameters has approximately a 10% share in all non-price criteria. This proves the professionalism of the contracting authorities, as does the application of other criteria, especially those taking into account environmental and subjective criteria.

The reluctance to use non-price criteria is not exclusively a feature of domestic contracting entities. Research shows that the practice of using non-price criteria has a significant statistical correlation with the duration of operation of the public procurement system within European structures. A statistically significant relationship was revealed between the use of non-price criteria and membership in the group of countries with accession before 2004 and others. The study shows that although it is possible to increase the order rate with a multi-criteria model

through administrative orders, pathological phenomena may appear instead of an increase in efficiency. Observations of the European system show that it takes time to reduce the share of orders in which the only criteria for evaluating offers is price. This time is needed to create a contracting authority-friendly environment that promotes not only effectiveness in awarding contracts, but also their effectiveness by changing the mentality of people responsible for awarding public contracts.

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## POZACENOWE KRYTERIA OCENY OFERT W POLSCE I UNII EUROPEJSKIEJ

**Cel artykułu.** Celem pracy jest identyfikacja preferencji, w zakresie stosowania pozacenowych kryteriów oceny ofert, zarówno zamawiających krajowych, jak i unijnych, ze szczególnym uwzględnieniem okresu funkcjonowania nowej ustawy Prawo Zamówień Publicznych. Badanie poszerzono o identyfikację rodzajów kryteriów pozacenowych stosowanych przez krajowych zamawiających.

**Metoda badawcza.** W badaniach wykorzystano dane pochodzące z europejskiej bazy Ted za lata 2019–2023. W celu wyznaczenia wskaźników struktury opisujących udział kryteriów pozacenowych w krajach Unii Europejskiej z podziałem na rodzaje zamówień wykorzystano dokumenty obejmujące wszystkie udzielone w Unii Europejskiej zamówienia przeprowadzone w latach 2021–2023. Preferencje krajowych zamawiających określono na podstawie próby losowej (losowanie proste) pobranej ze wszystkich udzielonych przez te podmioty zamówień w okresie, od stycznia 2021 r. do końca września 2023 r. W analizach wykorzystano metody statystyki opisowej oraz statystyki matematycznej (parametryczne i nieparametryczne testy istotności).

**Wyniki badań.** Zidentyfikowano zmiany w strukturze stosowanych modeli oceny ofert oraz dokonano porównania preferencji stosowania modelu wielokryteriovego pomiędzy krajami członkowskimi UE, których data akcesji była sprzed roku 2004 i pozostałych. Wykazano statystycznie istotne zróżnicowanie w zakresie stosowania kryteriów pozacenowych, w państwach, które włączono do struktur UE przed 2004 r. i pozostałych. Z przeprowadzonej analizy wynika, że dłuższa obecność w strukturach UE wpływa na zwiększenie wykorzystania kryteriów pozacenowych wyłącznie w obszarze dostaw i usług. Na rynku krajowym zmiana prawodawstwa, która miała miejsce w roku 2021 nie wyeliminowała patologii systemu polegającej na wprowadzaniu przez zamawiających martwych kryteriów pozacenowych.

**Słowa kluczowe:** zamówienia publiczne, efektywność, kryteria oceny ofert, konkurencyjność.

**JEL Class:** K49, G18, H12, H57.

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