

ANALYSIS OF AWARD CRITERIA USED IN PUBLIC PROCUREMENT PROCEDURES IN ROMANIA

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Abstract: *In public procurement procedures, the choice of award criterion, of the evaluation factors, of weightings and calculation algorithm are particularly important to successfully complete the procurement procedure. Given that after the procurement procedure has started, all these elements can no longer be changed, the correct selection of the award criterion may make the difference between the successful purchase of the products / services / works required by the contracting authority and the cancellation of the procedure. In the research literature, many cases of procurement procedures are described in which, due to the award criteria or the wrongly chosen evaluation factors, either products / services which did not reflect most accurately the need and the advantages desired by the contracting authority (with inferior characteristics of poor quality) have been purchased, or it was decided to cancel the procurement procedure. The article describes an analysis of the award criteria existing in the Romanian legislation, the ways of choosing them, the advantages and disadvantages of the use of each criterion, the risks identified when establishing the award criteria and the measures to deal with these risks.*

Keywords: *public procurement; procurement procedure; award criterion; evaluation factor, weight.*

JEL Classification: *C46, H57, H83.*

1. Introduction

The products, services and works that are the subject of public procurement have become more and more complex. Also, the environment in which contracting authorities fulfil their mission for which they have been set up is dynamic, constantly changing.

The spending of public funds must be made efficiently in order to achieve economic and social efficiency so that products, services and works match the purpose for which they were purchased.

In determining the tender evaluation criteria, several factors need to be taken into account, including the specificities of requirements and needs, the ability of the contracting authority to define requirements / needs in a clear and concise manner and to choose the relevant evaluation factors.

Thai et al. (2009) considers that an evaluation plan should first be established for the performance of the evaluation. The objectives of this plan are to clearly identify the following elements:

- the evaluation criterion;
- the evaluation factors;
- the calculation algorithm of the score or the calculation method;
- the tenderer's selection method.

These authors list a number of evaluation factors used in US procurement, namely: understanding the purpose of the project and the objectives, addressing the risk management proposed by the tenderer, demonstrating expertise in the field, the management team qualifications, company experience in similar project development, the quality assurance approach, the manner of reporting, the warranty and after-sales service, and prior performance records.

Often, the lowest price criterion is not enough to identify the best tender. In fact, there are other relevant aspects (evaluation factors) that can be considered, typically characteristics of the purchased product or services associated with its delivery. As the procurement is more complex, more and more non-price factors become more important in the tender evaluation process. Low cost pricing procedures are appropriate for products /

services where price is the only relevant factor (examples: procurement of electricity, food and office equipment) (Dimitri et al., 2006).

2. Award criteria in public procurement procedures in Romania

The award criterion is the element of an award procedure that is directly related to the content of the procurement object and to the Tender Book or Descriptive Document. The way in which the award criterion is designed, weighted and then evaluated is essential for both potential tenderers and contracting authorities.

Table 1: Number of procedures in Romania in 2017 according to types of award criteria

No.	Award criterion	Number of procedures	Weight
1	Lowest price	18,378	92.25%
2	Lowest cost	8	0.04%
3	Best quality-price ratio	1,512	7.59%
4	Best quality - cost ratio	25	0.13%
TOTAL AWARD PROCEDURES		19,923	100,00%

Source: National Agency for Public Procurement (ANAP) - Indicators to monitor the effectiveness of procurement procedures completed by contract / framework contract in 2017.

The activity of establishing the award criterion means choosing and substantiating the form that the "most economically advantageous tender" can take, so that a contracting authority can choose a tender according to what it considers to be the best solution from an economic point of view.

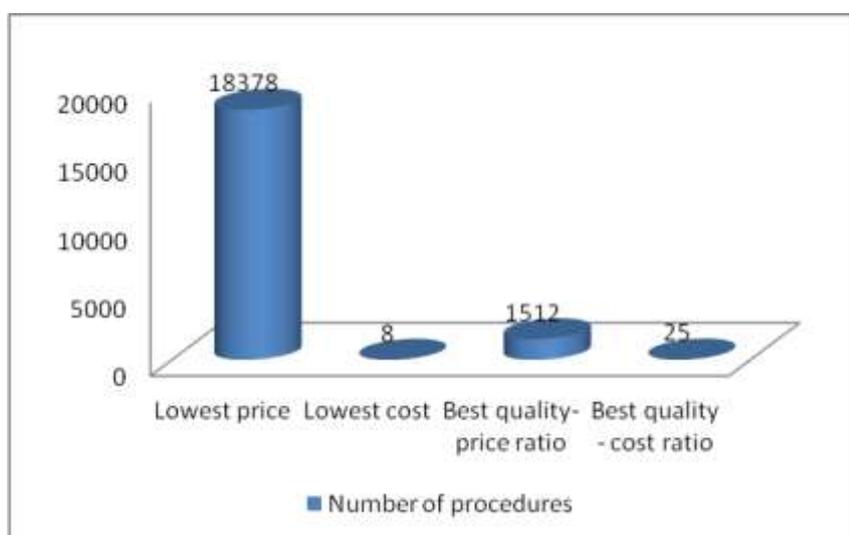


Figure 1: Graphic representation of the number of procedures in Romania in 2017 by type of award criteria

Source: Based on the data in Table 1.

According to Law no. 98/2016 on public procurement, the forms of award criteria are:

- the lowest price;
- the lowest cost;
- the best quality-price ratio;
- the best quality - cost ratio.

The distribution of the number of procedures in Romania in 2017 according to the award criteria is presented in Table 1.

Figure 1 shows that the highest number of procedures were awarded using the lowest price criterion (weight 92.25%) followed by the best quality-price ratio criterion (weight 7.59%).

The degree of use of each type of award criterion for the types of procedures conducted in Romania in 2017 is presented in Table 2.

Table 2: Degree of use of each type of award criterion by type of award procedures

No.	Procedure type	Award criterion								Total procedures
		Best quality - cost ratio		Best quality-price ratio		Lowest cost		Lowest price		
		No. of procedures	Weight	No. of procedures	Weight	No. of procedures	Weight	No. of procedures	Weight	
1	Open bid	6	24.00%	421	27.84%	2	25.00%	5,903	32.12%	6,332
2	Restricted bid	0	0.00%	4	0.26%	0	0.00%	39	0.21%	43
3	Negotiation	0	0.00%	18	1.19%	0	0.00%	63	0.34%	81
4	Call for tenders / Simplified procedure	19	76.00%	1,069	70.70%	6	75.00%	12,373	67.33%	13,467
TOTAL PROCEDURES		25	0.13%	1,512	7.59%	8	0.04%	18,378	92.25%	19,923

Source: National Agency for Public Procurement (ANAP) - Indicators to monitor the effectiveness of procurement procedures completed by contract / framework contract in 2017.

The graphical representation of the number of procedures by type of award criteria is shown in Figure 2.



Figure 2: Graphic representation of the number of procedures by type of award criteria

Source: Based on the data in Table 2.

As it can be seen from Figure 2, in 2017, for all four types of award criteria, most of the developed procedures were simplified procedures / calls for tenders and open bids.

3. Choosing the award criterion

The choice of the form of the criterion reflects the manner of understanding of the contracting authority over what constitutes the best solution from an economic point of view. Because there are two fundamental documents at the time of the selection of the criterion (the Tender Book / Descriptive Document and Technical Proposal Form), the choice of criterion should take a relatively short time.

The choice of the award criterion is based on the assumption that the reason of the award criterion is to enable the contracting authority to determine the tender that most faithfully reflects the need and the desired benefits, in terms of obtaining economic and social efficiency.

In defining the award criterion, the interpretations of the Court of Justice of the European Union may also be relevant as regards:

- the wording of the award criterion, namely the content of the evaluation factors and the link to the object of the contract;

- "unlimited freedom of choice", an expression that must be interpreted in terms of observing the principles of transparency and equal treatment.

From the application of the above rules, plus the contracting authority's obligation to publish the award criterion at the initiation of the procedure, the risk of occurrence of arbitrary and subjective decisions in the tender evaluation process should be reduced.

At the end of the activity to determine the award criterion, it must be ensured that:

a. the form of the award criterion contributes to obtaining the benefits anticipated by the contracting authority;

b. it is possible to apply the award criterion during the evaluation of tenders, as mentioned in the Awarding Documentation because:

- there are requirements defined in the Tender Book / Descriptive Document that allow the application of the criterion;

- the technical proposal form and the financial proposal form include requests for information necessary for the correct and complete application of the award criterion.

c. in establishing the award criterion, all legal regulations in force have been observed;

d. the established form of the award criterion, respectively the evaluation factors, their weight and the calculation algorithm, are directly related to the specific characteristics of the object of the contract;

e. the composition of the award criterion is objectively set and allows comparisons to be made between the tenders submitted;

f. the award criterion is determined by considering and observing the principles laid down in Law no. 98/2016 on public procurement (which are equal treatment, non-discrimination, transparency, mutual recognition, accountability and proportionality);

g. the award criterion must provide during the evaluation of the tenders an advantage to the tenderer who included in the technical and financial proposals submitted the information necessary for the application of that criterion and the advantage given may be concretized during the performance of the contract / framework agreement;

h. the decision on the structure and algorithm for the calculation of the award criterion should also be based on a simulation by reference to the content of the technical and financial proposal and the Tender Book / Descriptive Document. Also, there must be

prerequisites for obtaining the most economically advantageous tender by using them in the evaluation.

According to a notification from the National Agency for Public Procurement (ANAP) 2018 on how to set the award criterion for award procedures organized on batches and in case of procedures to be finalized by the conclusion of a framework agreement, when the procedure is organized on batches, the "lowest price" criterion can only be used for batches the estimated value of which is less than 648,288 lei, excluding VAT. For batches the estimated value of which exceeds this value threshold, one of the other three existing criteria must be applied.

The same notification establishes that, in the case of procedures to be concluded by the conclusion of a framework agreement, the "lowest price" criterion may only be used for procedures where the estimated value of the largest subsequent contract is smaller than the threshold value referred to above. If the estimated value of the largest subsequent contract exceeds the value threshold, one of the other three existing criteria must be applied.

There are no predefined recipes / models for a certain set of assessment factors, weights or calculation algorithms that must be included in an award criterion because the benefits that a contracting authority is interested in obtaining cannot be extended and applied to all contracting authorities.

The determination of the award criterion is closely related to the awarding procedure for which the contracting authority opts, as provided for in Law no. 98/2016:

- the award criteria used for competitive dialogue procedures are *the best quality-price ratio or the best quality-cost ratio*;
- the award criteria used for innovation partnership procedures are *the best quality-price ratio or the best quality-cost ratio*;
- the award criteria used for the award of public procurement contracts / framework agreements, having as object social services and other specific services provided by law and the estimated value of which is equal or higher than 3,376,500 lei excluding VAT, are *the best quality-price ratio or the best quality-cost ratio*.

4. The advantages and disadvantages of using the award criteria

The advantages and disadvantages of the use of award criteria in public procurement procedures are presented in Table 3.

Table 3: Advantages and disadvantages of using award criteria in public procurement procedures

	The lowest price	The lowest cost	The best quality-price ratio	The best quality-cost ratio
ADVANTAGES	<ul style="list-style-type: none"> ➤ Convenient, affordable criterion which involves selecting the lowest price tender that meets all the conditions of participation; ➤ Objective and quantifiable criterion; ➤ Allows the contracting authority to obtain the lowest price that the market can offer; ➤ Eliminates the possibility of challenging the outcome of the award procedure; ➤ Reduces verification time by ANAP and the risk of rejecting the award criterion; ➤ The time needed to evaluate the tender is more reduced. 	<ul style="list-style-type: none"> ➤ Objective and quantifiable criterion; ➤ Allows the contracting authority to obtain the lowest cost throughout the life cycle of the product; ➤ Provides the contracting authority with a clearer picture of the expenditure involved over a longer period of time; ➤ Allows contracting authority to estimate expenditures by subdivisions of the budget classification; ➤ Provides the contracting authority with the choice of more environmentally friendly products. 	<ul style="list-style-type: none"> ➤ Promoting quality, environmental protection and innovation; ➤ Allows the contracting authority to establish both technical and financial evaluation factors for operator selection; ➤ Allows the contracting authority some flexibility during the award procedure; ➤ May lead to the selection of an operator who proposes a tariff that allows for his / her business to run without financial constraints; ➤ Erasing very low prices, so called "dumping"; ➤ Allows the contracting authority to benefit from other advantages besides the low price (delivery terms, warranty terms etc). 	<ul style="list-style-type: none"> ➤ Promotion of quality and innovation, environmental protection, creation of new jobs; ➤ Allows the contracting authority some flexibility during the award procedure; ➤ Allows the contracting authority to estimate expenditures by subdivisions of the budget classification.

	The lowest price	The lowest cost	The best quality-price ratio	The best quality-cost ratio
DISADVANTAGES	<ul style="list-style-type: none"> ➤ Providing products and services of poor quality; ➤ Does not allow the contracting authority to show flexibility during the award procedure; ➤ Requires the contracting authority to ensure the fulfilment of the conditions regarding the technical, professional and financial capacity of the tenderers; ➤ Imposes strict financial discipline; ➤ Is less relevant to the "lowest cost" criterion, especially when analysing the operation of purchased products over longer periods of time. 	<ul style="list-style-type: none"> ➤ Requires the contracting authority to ensure the technical, professional and financial capacity of the tenderers; ➤ Providing products and services of poor quality; ➤ It creates problems in purchasing consumable products or repetitive services. ➤ Elements used to calculate life-cycle cost may sometimes be quite subjective and therefore easily objectionable (eg resale price in euro at end-of-life, end-of-life exchange rate value, etc.). 	<ul style="list-style-type: none"> ➤ Increase in the number of complaints regarding breach of the principle of proportionality, due to the non-justification of the evaluation factors and their inadequacy to the object of the contract; ➤ Technical evaluation factors are in fact useless since the relevant elements related to the technical and professional capacity of the tenderers can be established and imposed beforehand; ➤ Technical evaluation factors are difficult to set up to be objective and quantifiable; ➤ The flexibility during the award procedure and the relative lack of substantiation (lack of connection with the obtained advantages) of the evaluation factors lead to delaying the launching of the award procedure through repeated rejections / clarifications imposed by ANAP/potential tenderers; ➤ Establishing a winner among higher price tenderers; ➤ Longer time needed to evaluate tenders (occurrence of calculation errors). 	<ul style="list-style-type: none"> ➤ Increase in the number of complaints regarding the breach of the principle of proportionality, due to the non-justification of the evaluation factors and their inadequacy to the object of the contract; ➤ Technical evaluation factors are difficult to set up so as to be objective and quantifiable; ➤ The flexibility during the award procedure and the relative lack of substantiation of the evaluation factors lead to the delay of launching the award procedure through repeated rejections / clarifications imposed by ANAP; ➤ Establishing a winner among higher price tenderers; ➤ Longer time needed to evaluate tenders, possibility of calculation errors.

5. Risks identified when establishing award criteria and treatment measures

By using award criteria involving the establishment of evaluation factors in order to designate the winning tender, the contracting authority may give rise to speculation, as these are often not objectively and clearly defined.

In order to avoid such situations, the contracting authority has to use evaluation factors that reflect the real and obvious advantages it can achieve through their use. The evaluation factors and the methodology for their application (the calculation algorithm) must allow an adequate delimitation of tenders and avoid as much as possible the subjective assessments of the evaluation committee.

The calculation algorithm, the evaluation factors and the weights chosen must be as well defined as possible in order to be difficult to challenge. They should also eliminate the possibility of manipulation by tenderers who speculate any nonlinear variations between price and quality or cost and quality in order to obtain scores higher than the benefits aimed by the contracting authority.

For example, one should avoid the use of evaluation factors such as:

- "defects repair time", because this time cannot be estimated at the time of submitting the tenders;

- "understanding the tender book and project objectives" because these two elements cannot be quantified and subjective assessments of the members of the evaluation committee can be reached.

6. Conclusions

When determining the award criterion, the contracting authority, although it is free to determine the evaluation factors and their weighting, must ensure that the established factors and the calculation algorithm will lead to the selection of that tender which ensures the most valuable qualitative advantages with additional costs considered acceptable, subject to compliance with the principles set out in public procurement law.

Before establishing the awarding form in the awarding documentation, the award criterion must be verified by simulations to ensure that the chosen factors and the set scores are the best solution for determining the most advantageous tender in terms of quality-price ratio.

Only the simple application of an award form cannot automatically lead to the expected outcome. This must be correlated with a correct calculation of the estimated value of the contract (in order to avoid overestimation) and by reference to the actual conditions of selection and competitive participation.

References

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