GUIDELINES ON PUBLIC PROCUREMENT AWARD CRITERIA ON BEST PRICE/QUALITY RATIO
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As a result of the Government’s commitments to early further approximation of the Ukrainian Law on Public Procurement (PPL) with EU standards under the Public Procurement Reform Strategy/Road-Map adopted in February 2016, there will be an increasing focus on award criteria other than price in future updates of the Law, especially in regard to larger contracts. The reason for this development has to do with a growing EU emphasis on value for money as a more useful parameter for ensuring effective competition in public procurement than merely choosing what is cheapest. This is particularly evident in the latest revision of the EU Public Procurement Directives.

In the process of the further alignment of Ukrainian law with the Directives, it will also be required that contracting authorities are able to enter into a more nuanced evaluation of the quality of bids and thus go beyond the automated process focused largely on price in the current PPL.

Quality criteria are indeed recognised in the current PPL which explicitly allows such criteria to be used in the discounted price approach. The list of quality criteria is not exhaustive and contracting authorities, therefore, have relative freedom of choice within the 30% weighting that the PPL allows for quality criteria. However, as noted in the PPL Commentary, the discounted price approach requires the use in all cases of specific quantitative definitions of quality. This allows the mathematical conversion into discounted price without any human interference. The Commentary points out that this excludes the use of quality criteria where a more nuanced evaluation is required.

The use of quality criteria other than price means that quality becomes a competition parameter in the tender process alongside price/costs. Quality aspects, such as ease of operation or technical support, can, as an alternative, be defined as minimum requirements in the technical specifications which, together with the draft contract, are the main elements of the tender dossier.

Alternative use of Minimum Technical Specifications

In some cases the approach of defining quality as minimum requirements in the technical specifications may in fact be the most straightforward, with the effect that competition is based on price alone.

Example – technical specifications of quality for straightforward computer procurements

A government social service is planning to buy 1,000 computers for various groups of employees in charge of homogenous tasks, such as word processing and internet search, and not requiring the use of complex design or economic simulation software. The needs of the contracting entity can be relatively easily elaborated into a minimum computer configuration (microprocessor speed, screen size, memory etc.).


2 Law on Public Procurement, Article 28.

3 Commentary to Ukrainian Public Procurement legislation (December 29016) by Olexandr Shatkovskyi and Sergii laremenko http://eupublicprocurement.org.ua/wp-content/uploads/2017/01/PPL-Commentary_2017_ENG.pdf
It is likely that such relatively standardised requirements would be fulfilled by a number of existing models on the market and allow for a high degree of competition based on price alone.

This approach, however, has its limits when it comes to more complex needs. Compliance with technical specifications are essentially evaluated on a pass/fail basis with the effect that failing bids are rejected as non-compliant. Accordingly, there is no selection of the “best” bid in terms of quality. The risk of using a high level of technical specification as the sole quality parameter is that too many bids may need to be rejected to the detriment of competition.

To cover such situations, the use of quality criteria other than price is an important tool. Many contracting authorities in Ukraine (and indeed elsewhere) are hesitant in using criteria which are less objective than price. Nonetheless, this should not deter the opening up of competition on quality and cost in the interests of improving the degree of competition and achieving greater value for public money. Failure to take quality into account can have serious consequences for the public sector and the citizens who rely upon its services.

**Example – the cheapest website**

Such consequences can arise, for example, with a poorly designed website which is built by the company offering the lowest price, but which users are unable to access because quality and technical merits were not properly evaluated during the procurement process.

It is difficult to evaluate such features on a pass/fail basis, and sometimes it may be worth paying more at the outset to avoid future costs or problems. Thus, a cheap website which just meets the specification may need more frequent updates or security patches than a more expensive one which is properly designed from the beginning.

Using award criteria rather than just technical specifications to address quality allows the market to propose various solutions and can also lead to more innovative and sustainable public sector contracts. A means often used for objectifying the evaluation process in such cases is for the contracting authority to clearly specify the award criteria and how they will be used. These Guidelines provide distinct advice in this respect.

**Quality and Cost**

Both quality and cost are alternatives to using merely price as an award criterion. In regard to costs, cost criteria can be used, for example, in the procurement of vehicles (e.g. fuel and maintenance) and photocopiers (e.g. energy consumption and replacement of ink cartridges) as it is clear that there are substantial costs in connection with use which, over the lifetime of the product, may play a relatively bigger role in terms of value for money than price alone.

The *Guidelines on Life-Cycle Costing and Abnormally Low Tenders*[^4] clarify the nature of such costs and show how they can be applied as award criteria. In turn, the *Guidelines on Green Procurement*[^5] explain how a wider application of life-cycle costs may include environmental costs concerning not just the lifetime of the product but also preliminary and subsequent phases.

Relevant “green” costs in this respect would include those linked to the generation of raw material

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Guidelines on public procurement award criteria on best price/quality ratio

for the production, the production itself, delivery to the user as well as costs connected with the ultimate disposal of the product beyond the sphere of the contracting authority in the form of re-use, recycling, landfilling etc.

Competition based on costs will often involve quality elements. Low maintenance or energy costs are indicators of quality and the use of such costs as award criteria would, therefore, promote competition on at least some quality aspects (reliability of operation and energy efficiency).

In addition to costs, the option is to focus on the best price/quality ratio. This would involve the use of criteria which, unlike costs, are not always directly quantifiable and may be of a non-economic nature. It is the formulation of such award criteria and methods for their evaluation that may prove most challenging for contracting authorities.

Choice of quality aspects

The notion of quality includes different aspects such as: performance capacity, user-friendliness, design, compatibility with other brands/systems or availability of after-sales service. The application of the option “best relation between price/cost and quality” requires in each case the identification of the specific quality aspects which should be made subject to competition.

A relevant question in identifying relevant specific quality aspects is whether a difference in quality between products (in regard to e.g. user-friendliness) would justify paying a higher price for the most user friendly product, especially in cases where the differences in quality might be marginal but substantial in terms of price. It is especially in these cases that strong competition can help to identify the best price/quality relation.

Example – need for specific advanced quality features in respect of audio equipment

In addition to performance in terms of the quality of sound and volume in the case of audio sound systems, there will be other quality aspects such as design, user-friendliness, and compatibility with electronic storage media. The sound quality might be less important for a sound system to be used in a public institution in connection with customer services operations. On the other hand, user friendliness (for the staff) and design (e.g. where space may be limited) might be qualities of such importance for the specific intended use of the equipment that the contracting authority could justify a higher price to achieve these qualities in the equipment.

Clarity and verifiability

From the perspective of the contracting authority, award criteria need to be applied in the same manner to all bids. Otherwise, the bids would not be treated equally. When award criteria are too general or too vague, they provide no basis for measuring specific qualities in a consistent manner.

The risk, from the perspective of contracting authorities, is that they may end up with bids which are not effectively comparable because the quality needs have been misunderstood and interpreted very differently by bidders.

From the bidder’s perspective, quality criteria must be sufficiently precise to ensure that they are correctly understood. A yardstick in this respect is the extent to which a criterion can be expected to be uniformly interpreted by a “reasonably well-informed and normally diligent” bidder. Thus, a
criterion may include measurements and indicators that may not necessarily be familiar to the general public but only to the practitioners involved in the type of contract at issue.

For these reasons, the EU Public Procurement Directives require that award criteria do not confer an unrestricted freedom of choice on contracting authorities and that they are capable of verification. It is often said that award criteria must be “measurable”. Therefore, a mere reference to “quality”, “functionality” or other similarly general terms creates the potential for a wide range of interpretations and is not sufficient.

Example – “Quality” of furniture

In the case of furniture, the terms “quality” can refer to artistic design, the materials used (quality of wood), resistance to wear and tear etc.

Accordingly, it is necessary to focus the criterion on specific aspects, such as the resistance to wear and tear of the fabric of the furniture. Otherwise bidders would be left in a situation where they cannot know which quality aspects are important for the contracting authority.

Normally, the technical specification, with its minimum requirements, already details the aspects that the contracting authority considers important. In many cases, therefore, it is a straightforward solution to reflect some of these aspects for competition in the award criteria.

Example – linked award criteria in the procurement of photocopying equipment

In the case of a photocopier, the technical specifications may lay down minimum requirements as regards energy consumption per month (based on an estimated daily usage), cartridge lifetime, printing quality and speed (pages per minute).

A related award criterion could involve competition in respect of the warranty period and repair conditions.

In these cases, the award criterion could also go beyond the technical specifications and concern service, for example most frequent service checks or shortest call-out times for aftersales servicing.

Example – cleaning services

In the case of service contracts concerning, for example, cleaning in municipal office buildings, the technical specifications may in a functional manner include minimum requirements in regard to a defined level of cleanliness (absence of dust, odours and specified procedures for verification) but without specifying means or procedures.

The alternative is to specify certain number of cleaning routines over particular time period (per day, per week). The award criteria here could centre on higher levels of cleanliness or frequency of cleaning procedures, possibly also focused on specific risk areas such as kitchens and toilets.

Relevance of Criteria

Quality criteria may concern any aspect of relevance to the subject matter of the contract, including, for example, the production processes and raw materials used. The EU Public Sector Directive defines “relevance” in the following manner:
Relevance of award criteria - Article 67(3) of the EU Public Sector Directive

“Award criteria shall be considered to be linked to the subject-matter of the public contract where they relate to the works, supplies or services to be provided under that contract in any respect and at any stage of their life cycle, including factors involved in:
(a) the specific process of production, provision or trading of those works, supplies or services; or
(b) a specific process for another stage of their life cycle,
even where such factors do not form part of their material substance”.

The possibility of going beyond the “material substance” is often used for setting green procurement criteria concerning production processes but such criteria must still be related to the contract as such. This would not be the case if these criteria are chosen simply to promote and foster such policies in general, while not obviously linked to the subject matter of the contract. One landmark case from the European Courts illustrates this.

The view of the European Court in Case C-448/01, EVN

Case C-448/01, EVN*, concerned the procurement of electricity and an award criterion concerning the amount of electricity that could be supplied from renewable energy sources. The relevance of the criterion as such was not criticised but rather its manner of verification, which essentially focused on the amount of such energy that could be supplied in excess of the needs of the contracting authority. Thus, the criterion did not relate to the subject matter of the contract because it did not concern the electricity actually to be delivered.

Using the subject-matter of the contract as a yardstick would in general exclude setting award criteria to have bidders compete on unrelated matters, such as service facilities in areas beyond the scope of the contract.

The Guidelines on Qualification Criteria and Restricted Tenders7 highlight the importance of distinguishing between award criteria and qualification criteria. An award criterion requiring bidders to compete on aspects of their general technical or financial capacity (for example size of turnover or production facilities) is a qualification criterion and, accordingly, would not be relevant to the subject-matter either.

Weighting and Scoring of Criteria

Weighting means that the relative importance of each award criterion must be made clear and the full advance disclosure of weighting contributes to the transparency of the evaluation process. This can be done by assigning a percentage to each criterion, e.g. price: 45%, quality: 30% and service: 25%. The weightings must be carefully considered, because a very high weighting of price (for example) may result in even minor price differences determining the outcome of the tender.

6 Case C-448/01: EVN AG and Wienstrom GmbH v Republik Österreich (reference for a preliminary ruling by the Bundesvergabeamt – Austria), [2003] E.C.R. I-14527.
7 Link to be added.
The EU Public Procurement Directives also make it possible to set a range of weighting numbers e.g. 40-50% instead of 45%. The use of a range can be useful in cases of scarce market information and uncertainty as regards the variation to be expected in prices and qualities. The use of ranges will allow an adjustment to prevent one criterion carrying too much weight in cases where the bids received show that the market can only offer marginal differences. The EU Public Procurement Directives also allow a simple prioritising in cases where weighting is not possible for objective reasons.

In the practical application of the weighting rules, the following questions and problems have been encountered:

- A criterion becomes too vague and its priority distorted if the span is too large. This would be the case if a criterion is given a span of, for example, 20 – 70%
- On the other hand, the span must not be too narrow so that it may even disappear completely, for example if the indicated span was 0 – 10%.
- When a weighting is identified within a span for the criteria in question the sum of the percentages must of course be 100%

For the weighting of the criteria to make sense it is necessary to introduce a scoring system where price and quality are converted into uniform values (either points or pricing of quality) as a basis for the rating and subsequent weighting.

As in the case of the examples below, scoring systems may be built around certain reference prices or they may vary according to the concrete spread of bids. Thus, variations in scoring systems can produce different results even when weighting remains unchanged. As already mentioned, the scoring system should be fixed in advance and publicised in the same manner as the weighting, in the interest of transparency.

Advance information of the criteria, their respective weighting and the scoring method will clarify to the potential bidders what factors determine the evaluation and on which specific points they should optimise the bids. It will also enable them to check afterwards whether the evaluation actually was done correctly.

Various ways of scoring are possible and will depend on the procurement in question. Scoring can be based on price and quality being converted into points or quality being converted into price. The scoring can take account of the relative differences between the bids or focus on each bid independently. Market knowledge or budget limitations could make it feasible to use a method based on a reference price.

As already mentioned, the results of scoring methods may depend not just on the weighting of criteria but, in some cases also, on the specific spread in terms of quality and prices between the bids received. Accordingly, it is advisable to test the scoring method to see how it works with different numbers and sizes of bids.

The following are examples of different scoring models based on identical bids and weightings:

<table>
<thead>
<tr>
<th>Bids</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prices</td>
<td>2.000.000</td>
<td>2.050.000</td>
<td>2.250.000</td>
<td>2.600.000</td>
<td>2.700.000</td>
</tr>
<tr>
<td>Quality</td>
<td>1</td>
<td>3</td>
<td>4</td>
<td>7</td>
<td>8</td>
</tr>
</tbody>
</table>

**Weighting:** price: 70% and quality: 30%.
For each bid the quality is evaluated on a scale from 0 to 8 where 8 is given for best quality. For each bid the difference in relation to the best quality bid is then calculated.

The prices of each bid are similarly converted into differences in relation to the bid with the lowest price.

The results are weighted by multiplying the percentage differences as regards prices by 70% and the differences as regards quality by 30%.

<table>
<thead>
<tr>
<th>Weight</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
</tr>
</thead>
<tbody>
<tr>
<td>Price %</td>
<td>0%</td>
<td>2,5%</td>
<td>12,5%</td>
<td>30,0%</td>
<td>35,0%</td>
</tr>
<tr>
<td>Quality%</td>
<td>87,5%</td>
<td>62,5%</td>
<td>50,0%</td>
<td>12,5%</td>
<td>0%</td>
</tr>
<tr>
<td>Price</td>
<td>70%</td>
<td>0%</td>
<td>7,5%</td>
<td>17,5%</td>
<td>21,0%</td>
</tr>
<tr>
<td>Quality</td>
<td>30%</td>
<td>26,25%</td>
<td>18,75%</td>
<td>15,00%</td>
<td>3,75%</td>
</tr>
<tr>
<td>RESULT</td>
<td>26,25%</td>
<td><strong>20,50%</strong></td>
<td>23,75%</td>
<td>24,75%</td>
<td>24,50%</td>
</tr>
</tbody>
</table>

Bid B has the lowest combined differences in percentage and is therefore the winner.

The model is based on relative differences compared to the bids with the lowest price/best quality. The use of relative models effectively means that the scoring of one bid depends on the content of the other bids. The results of the scoring may be strongly affected by any bids with prices or quality significantly higher or lower than other bids.

The difference between scoring models is illustrated by the following example where bids identical to the example above are scored by means of a different model.

### Scoring model based on reference price

A reference price of 2.200.000 is established independently by the contracting authority on the basis of market knowledge or for that matter budget constraints. Quality will be scored on a scale of 0 – 8 with 0 for best quality. The price of quality –or rather the cost of lack of quality - can therefore be set at 275.000 per quality point (2.200.000 divided by 8).

Weighting: price 70% and quality 30%.

<table>
<thead>
<tr>
<th>Bids</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prices</td>
<td>2.000.000</td>
<td>2.050.000</td>
<td>2.250.000</td>
<td>2.600.000</td>
<td>2.700.000</td>
</tr>
<tr>
<td>Quality</td>
<td>7</td>
<td>5</td>
<td>4</td>
<td>1</td>
<td>0</td>
</tr>
</tbody>
</table>

The quality scoring is “priced” by multiplying the quality rating of each bid by 275.000. In the case of best quality the pricing is 0.

The results are weighted by multiplying the percentage differences as regards prices by 70% and the differences as regards quality by 30%.

<table>
<thead>
<tr>
<th>Weight</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
</tr>
</thead>
<tbody>
<tr>
<td>Price</td>
<td>2.000.000</td>
<td>2.050.000</td>
<td>2.250.000</td>
<td>2.600.000</td>
<td>2.700.000</td>
</tr>
<tr>
<td>Quality</td>
<td>1.925.000</td>
<td>1.375.000</td>
<td>1.100.000</td>
<td>275.000</td>
<td>0</td>
</tr>
<tr>
<td>Price</td>
<td>70%</td>
<td>1.400.000</td>
<td>1.435.000</td>
<td>1.575.000</td>
<td>1.820.000</td>
</tr>
<tr>
<td>Quality</td>
<td>30%</td>
<td>577.500</td>
<td>412.500</td>
<td>330.000</td>
<td>82.500</td>
</tr>
<tr>
<td>RESULT</td>
<td>1.977.500</td>
<td><strong>1.847.500</strong></td>
<td>1.905.000</td>
<td>1.902.500</td>
<td>1.890.000</td>
</tr>
</tbody>
</table>
Bid B has the lowest result and wins the tender.

The setting in advance of a reference price means that it is precisely indicated what the contracting authority wishes to pay for quality. This allows bidders to optimise their bids in relation to what the contracting authority wishes. Obviously, the higher the reference price, the more the role of quality will increase. Unlike the relative models, this model is not as affected by any unexpectedly high spread in bids. Another variant is that the model bases the reference price on an average of the received bids. Here, there is no longer an advantage for the bidders to know in advance the price of quality.

In the various examples, the scoring of quality is based on a rating of the extent to which each bid fulfils the quality criteria. The rating involves points from 0 to 8 in the above examples. A wider span (e.g. 0 – 15) might make it complicated to justify a specific result. On the other hand, a range of 0 to 3 might not allow for sufficient nuances in the evaluation.

Quality criteria can sometimes (just like price and cost criteria) be expressed in quantitative terms. This is the case where criteria are focused on specific levels of performance, e.g. copies per minute for photocopiers, emission levels from vehicles or delivery times. In such cases, the rating is relatively straightforward. However, especially in the case of services, the quality criteria will often need to be more descriptive and allow for a more subjective approach. In these cases, it is a challenge to design the criterion in such a way that it both clearly indicates to bidders what will be scored and limits the discretion of the contracting authority to ensure that all bids are scored in the same way.

Example: Cleaning supplies and services

The criterion quality is weighted at 50% and includes two sub-criteria each to be rated on a scale from 0 – 8 points. The sub-criteria concern: 1) the degree of maintenance and monitoring and 2) the quality of the staff assigned to the tasks. More specifically, the following is required:

1. A plan for the cleaning of the facilities and a description of what the cleaning operations include as well as the forms used for documenting the services provided.
   - The plan must include a structured and detailed analysis of the facilities that would allow the staff dedicated to the task to be aware of all areas that would require monitoring and maintenance.
   - There must be an adequate annual amount of service checks to ensure that errors and omissions are discovered in time. The amount of service checks must be indicated and why this exact number would be reasonable.

2. A description of the required professional background of the staff seconded for the task as well as their continuous vocational training.
   - The spread of competences amongst the seconded staff is important and a broad selection of professional skills and experience concerning servicing and consulting as regards the products covered by the tender.
   - The staff must be updated on new products, services and initiatives and changes in the market. It must be described, what will be done to keep the staff updated.
In the example, an attempt has been made to make clear what the contracting authority considers particularly important as guidance for the bidders. There is a quantifiable element - the amount of service checks. However, the scoring does not automatically reward the highest number of checks. A bid with a lower number may be rated higher depending on the reasoning included in the bid\(^8\).

\[^{8}\text{For further information on different scoring models, see: https://negometrix.com/docs/instructions-buyer-formulasnl/a-study-of-formulas-for-choosing-the-economically-most-advantageous-tender}\]