

## Article

# Legal Aspects of the Evaluation of Tenders in Public Procurement Procedures in the Polish Mining Industry

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**Abstract:** Public procurement procedures facilitate the purchase of products, services, or civil works by public administrations. In Poland, they follow the national rules specified in the Public Procurement Act. Public procurement aims to ensure a transparent and competitive purchasing process, effective use of public resources, equal treatment of all tenderers, and supply of the best products and services. Various aspects of tender evaluation often determine public procurement and the actual process. Of fundamental importance are price and quality. The Polish mining industry is very mature and includes many stakeholders, such as underground, surface, and borehole mines. Public procurement in the mining industry is specialised and involves complex contracts between the contracting authority and the contractor. Additionally, the mining industry involves very high-risk levels and requires special safety efforts. Therefore, this article presents the analysis results related to evaluating offers in public tenders in the most prominent Polish enterprises of the mining industry. The results indicated what procedures should be carried out and what offer evaluation criteria are essential. The emphasis was placed on ensuring that the selection of offers in this industry are not based only on one criterion: price.

**Keywords:** public procurement law; Poland; European Union; tender evaluation criteria; mining industry



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## 1. Introduction

Public procurement is a purchase process whereby the contracting authority purchases goods or services from suppliers through public procurement notices. In most European countries, this process is regulated by a law that specifies the principles for awarding public contracts and the obligations and rights of both contracting authorities and contractors. Therefore, it is a critical tool for executing public duties and furthering market development. The primary purpose of public procurement is to select the best tenders submitted by contractors who intend to supply goods, services, or civil works for the contracting authority. EU member states pursue this objective through national regulations to provide a framework for this process [1].

Public procurement law requires the use of procedures that guarantee contractors that offers will be selected based on substantive criteria, guaranteeing that the tender will be won by the one who best responds to the needs of the ordering party. However, the procedure's effectiveness, regardless of the industry and type of entity used, depends on the people's competencies in preparing and conducting the tender procedure [1].

Public procurement is part of many lines of business and sectors of the economy. The construction industry is a good example; public procurement is essential for construction

projects such as roads, bridges, tunnels, airports, public buildings, and housing [2]. Another industry where public procurement is commonplace is transport. It is a method for selecting contractors to provide transport services, such as passenger or cargo carriage, repairs and maintenance, or transport infrastructure. Other branches that frequently use public procurement include environmental protection, power engineering, healthcare, education, public administration, culture and art [3], and the mining industry. Regardless of the sector, the public procurement process involves various tenders submitted by contractors that the contracting authorities evaluate based on an appropriate legal basis.

This article focuses on the mining industry because it is a specific, highly capital-intensive industry of particular importance for the economy. In recent years, this industry was considered to be in decline, but it is undergoing a gradual revival again due to the rising prices of alternative electricity carriers, such as natural gas or crude oil, and due to a much lower-than-expected increase in the share of renewable energy sources in meeting energy needs in Europe and around the world [4].

This article aims to draw attention to the importance of public tenders in the mining industry, characterised by the high demand for high-cost resources and services necessary to carry out its activities. Considering the current situation in the mining industry, especially hard coal, it is necessary to emphasise the efficiency and cost-effectiveness of the implementation of announced public tenders. The article's authors attempted to draw attention to the offer selection criteria, suggesting that the price criterion alone is insufficient, especially in the current turbulent and unstable environment, which increases the risk of the contractor's failure to fulfil the contract [4].

The fundamental research problem in this article is to identify the primary aspects of public procurement tender evaluation in the mining industry and other sectors in terms of services, product deliveries, and construction works (including mining). The proposed hypothesis is that a public procurement tender must meet financial or economic requirements, but the qualitative aspects of tender evaluation are often more critical. In order to prove the thesis, the article briefly characterises public procurement in Poland and selected European Union countries, presents the general procedure for evaluating offers in Poland and then focuses on the mining industry, where the results of the analysis related to the evaluation of offers in public tenders are presented in the most prominent Polish mining industry enterprises. What procedures should be carried out and what offer evaluation criteria are essential are indicated. The emphasis was placed on ensuring that the selection of offers in this industry is not based only on one criterion: price.

## 2. Public Procurement in Poland

In Poland, public procurement is a process for purchasing products, services, or civil works by public administrations. The procedures are regulated mainly by the Public Procurement Act of 11 September 2019 [5] (hereinafter the Act). Note that the Act applies to standard contracts and contests worth PLN 130,000 (EUR 30,000) or more that are held by public contracting authorities and to utility contracts and contests, the values of which reach or exceed the so-called EU thresholds. Furthermore, the Act specifies institutions exempted from its provisions, such as the National Bank of Poland, Bank Gospodarstwa Krajowego (Polish Development Bank), and others.

Article 11 of the Act [6] provides for material scope exemptions; for example, it does not apply to contracts or contests in the scope of arbitration, conciliatory services, or legal services that should not be subject to public procurement procedures due to their profile. The primary objective of public procurement is to ensure a transparent purchase process, protect competition, and ensure effective use of public funds and equal treatment of all tenderers. The public procurement process involves several stages, from the publication of a contract notice to the conclusion of a contract with a selected contractor.

It is crucial to draft a proper tender dossier, including a detailed description of the requirements and criteria for tenderers. Public procurement legislation is dynamic and frequently amended to accommodate market and EU requirements. In 2021, changes were

made regarding the selection of the most advantageous tender, facilitation of procedures for small and medium enterprises, and emphasising the role of electronic workflow in public procurement [7].

The Polish law also provides special public procurement procedures, such as single-source procurement, utility contracts, restricted procedures, and many more. It is vital for the public procurement process that public authorities conform to the Act and ensure equal and fair access to procurement procedures for all potential contractors. In the case of a violation, the tenderer may challenge the decision of the contracting authority with an administrative court [8].

Public procurement serves multiple purposes both for public administrations and the public as a whole. Some of the goals of public procurement relevant here are:

- (1) (To ensure the transparent purchase of goods and services: Procedures and requirements for publishing information about the contract make the purchasing process open and transparent.
- (2) To protect competition: Public procurement creates equal opportunities for all tenderers, which improves market competition and prevents monopolies.
- (3) To use public funds effectively: Public procurement focuses on achieving the best price-to-quality ratio. This approach saves public funds and ensures only necessary projects receive funding [9].
- (4) To ensure equal treatment of all tenderers: All tenderers are treated equally, which prevents nepotism and corruption.
- (5) To support local development: Contracting authorities may hire services of local suppliers, which helps the local economy.
- (6) To source the best products and services: The public procurement process guarantees that the most advantageous tender from the point of view of the contracting authority is selected, which allows them to ensure the best quality of goods and services [10].
- (7) To comply with the law and EU directives: The public procurement process has to observe the law, including EU directives, which improves standards and safety.

Moreover, public procurement has many functions intended to protect the interests of the state and the public. The most noteworthy of them are [11]:

- (1) The economic function: Public procurement processes satisfy the economic needs of the state and the public by providing them with goods and services.
- (2) The financial function: Public procurement is used to save public money by reaching the lowest price at the best quality of goods and services.
- (3) The integration function: This is related to the integration of various business operators and satisfying public needs.
- (4) The market-shaping function: This involves affecting the growth of the market by stimulating competition and supporting industries particularly valuable to the state [12].
- (5) The function of protection of public interests: This concerns ensuring a transparent and open public procurement process, and protection of state and public interests through quality and safety requirements for goods and services.
- (6) The environmental function: Environmental aspects are taking into consideration in public procurement, such as renewable energy, greenhouse gas emissions, and environmental protection.
- (7) The social function: The needs of the society are taking into consideration in public procurement processes, such as the employment of people with disabilities, stewarding occupational safety, gender equality, and others [13].

In Poland, public procurement follows many principles provided in the Act. They are intended to ensure transparency, openness, and competition during the purchase process. The key principles include:

- (1) The principle of competition: to ensure equal opportunities to all operators that meet the criteria in the contract notice. The contracting authority must not discriminate against any tenderers and must treat them equally.

- (2) The principle of equal treatment: requires that all tenderers are treated equally and impartially. The contracting authority must not favour one tenderer over the others.
- (3) The principle of openness: is related to the provision of information on public contracts, such as notices, specifications, evaluation criteria, results, etc. All the information must be available to all interested parties [14].
- (4) The principle of transparency: requires the public procurement process to be transparent and understandable to all interested parties. All decisions in the course of the process should be grounded and based on objective criteria.
- (5) The principle of effectiveness: intended to select the best tender in light of the objectives of the public procurement process. This means that tender selection should involve qualitative criteria in addition to the price [15].
- (6) The principle of proportionality: concerns the selection of the most suitable way of performing under a public contract considering its objective and nature. This means that the contracting authority must not select a method for performing under a public contract that is disproportionate.
- (7) The principle of fairness: requires the public procurement process to be fair and consistent with the law. Therefore, the contracting authority must act in line with the law and professional codes of conduct [16].
- (8) The principle of equivalence: the contracting authority must consider the tenderer's documents issued in another EU member state as equivalent to Polish documents.

Polish contracting authorities can choose among several procedures for the public procurement process. The types of public procurement procedures for contracts at or above the EU thresholds are the open procedure, the restricted procedure, the negotiated procedure with publication of a contract notice, the negotiated procedure without prior publication of a contract notice, competitive dialogue, innovation partnership, and so-called single-source procurement [17]. The Act specifies all the procedures, components, and requirements.

### 3. Public Procurement in Other EU Member States

Public procurement is found in many other countries and the European Union. The harmonisation of public procurement law in the EU has recently exhibited a trend towards increasing legislation concerning non-economic goals. They include the protection of competition, social aspects, environmental protection, and support for innovation. Public procurement law was first harmonised in the 1960s, in 1962 and 1964, to be more precise. It was then that analysts found out that the market for goods and services purchased by the public sector is such large a part of the common market that it affects the free flow of goods, services, and capital [18].

The first country analysed here is Germany. In Germany, public procurement is regulated by the Act on Public Procurement (Vergaberecht). The contracting authority must follow the principles of openness and transparency and base the selection on objective qualitative criteria. When purchasing goods and services, the contracting authority must ensure competition and be free of bias against or in favour of any tenderer [19].

French public procurement employs the principle of equality, and the selection process should consider the best price-to-quality ratio. The contracting authority is obliged to select the most advantageous tender regarding the objectives of the public contract. Moreover, social criteria also play a role in France, such as employment and environmental protection [20].

In Greece, public procurement is regulated by national legislation harmonised with the EU requirements regarding public procurement. The public procurement system in Greece is founded on open competition and equal treatment of all tenderers, transparency, fairness, and effectiveness. Public contracts in Greece can be awarded in various ways: through a tender procedure, competitive dialogue, negotiated procedure without prior publication of a contract notice, and other procedures set in the legislation. The procedures need to conform to transparency, fairness, and equal opportunity principles. Public procurement

procedures in Greece employ the criteria of price, quality, social and environmental criteria, timeliness, and warranty. Tenderers may challenge the results if their rights are violated in public procurement procedures [21].

Another relevant EU member state is Italy. Italy is known for abundant public procurement legislation to ensure fairness, transparency, and competitiveness in the purchase process. Public procurement in Italy uses such qualitative criteria as the experience of the tenderer, quality of the product or service, and price. The choice depends on the weight of the criteria. Italy is also among those countries that have an electronic public procurement process [22].

The Act on Public Procurement regulates public procurement in Czechia. It implements EU standards for procedures and conditions of awarding public contracts. Its objective is to ensure fair competition on the market and selection of the best tender while considering qualitative, social, and environmental criteria. Public procurement procedures apply to supplies, services, and civil works. Public contracts must be published on an official website and national newspaper, and when the contract value exceeds EU thresholds, they must also be published in the Official Journal of the European Union. When selecting the contractor, several criteria, such as price, quality, and lead time, the value of non-economic criteria, including social, environmental, and innovative aspects, must not exceed 30% of the total tender value [23].

The last state worth a closer look is Spain. The Act regulates public procurement and contracts with the public sector. Qualitative criteria such as product or service quality and timeliness guide the tender selection. The Spanish legislation provides mechanisms for tenderers to challenge the contracting authority's decision [24].

Interestingly, the European Commission also intends to make use of various EU financial instruments, such as Structural Funds, rural development programmes, TEN, or the Framework Programme for Research and Technological Development, as elements of a coherent funding strategy to combine public and private capital from the EU and member states [25]. It should have a positive impact on public procurement in EU states. The essential reformation plans in this regard include effective and fair competition in public procurement markets (i.e., social market economy or the European single public procurement market) [26].

#### 4. Evaluation of Public Procurement Tenders in Poland

In addition to all the financial, cost-effective, and economic criteria mentioned above, legal aspects of tender evaluation in public procurement may be crucial. Tender evaluation is one of the critical stages of the public procurement process aimed at selecting the best contractor and tender for the contracting authority from among all tenders submitted in the procedure (according to Article 91, paragraph 1 of the Act). The evaluation must follow the Act on Public Procurement to ensure a transparent and fair process [27].

When awarding public contracts, the contracting authority should specify the tender evaluation criteria for the evaluation process. Article 2, point 5 of the Act defines the most advantageous tender, which requires that the tender represents the most advantageous balance of price and other criteria relevant to the subject matter of the public contract or has the lowest price. The criteria should be published in the contract notice or contract specifications. They should be relevant to the subject matter of the contract and consider the importance of individual components of the tender, for example, quality, timeliness, functionality, technical parameters, environmental or social aspects, innovativeness, technical service, lead time, and operational costs [28].

The Public Procurement Act defines two types of tender evaluation criteria: qualitative tender evaluation criteria and price tender evaluation criteria. Article 242, paragraph 2 of the Act specifies the qualitative tender evaluation criteria. They apply to the qualitative characteristics of the tender that affect the performance under the public contract. Price tender evaluation criteria are specified under Article 242, paragraph 2 of the Act and are related to the tender price. According to this Article, the tender price should be the main



contractor selection criterion if no qualitative tender evaluation criteria are specified. When price criteria are considered along with qualitative criteria, the tender price may constitute a larger or smaller part of the total criteria value. Note that the legislation provides for certain restrictions on tender evaluation criteria to ensure fair competition in public procurement procedures [29].

Public procurement tender evaluation involves comparing individual tenders against the criteria specified by the contracting authority. The evaluation should be transparent and unbiased. Tender evaluation must conform to fair competition and transparency principles rather than be based on any criterion. The contracting authority is not free to use any criteria of its choice; the criteria must be relevant to the tendered services, supplies, or civil works [30].

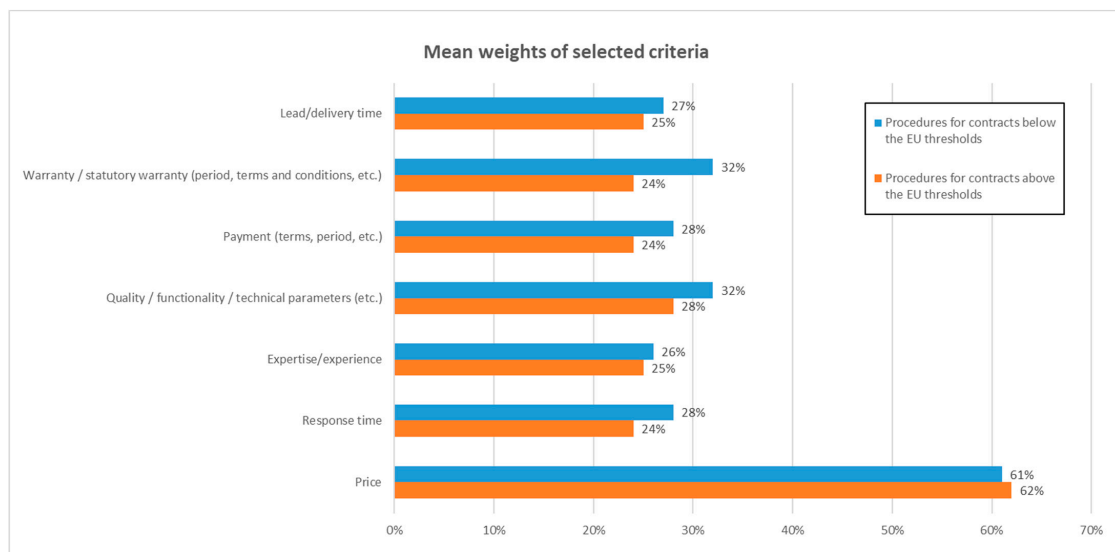
Regarding legal aspects of tender evaluation, note, for example, that Article 241 paragraph 3 of the Act includes a limitation that evaluation criteria must not concern the contractor, particularly its economic, technical, or financial reliability (subject to Article 5 paragraph 1 of the Act). It means that the contracting authority's tender evaluation criteria choices are also limited in terms of legal aspects of tender evaluation. Therefore, the contracting authority must avoid using such tender evaluation criteria as the contractor's experience or expertise [31]. Still, the contracting authority may impose specific preconditions for participation in the procedure to ensure proper performance under the contract. However, the preconditions must allow fair competition. Any requirements of relevant experience must be posed as preconditions for participation, not tender evaluation criteria [32].

Regarding tender evaluation criteria in Polish public procurement law, the Statement of the President of the Public Procurement Office on the functioning of the public procurement system is published every year. In recent years, tenders were still evaluated with two criteria (price and one non-price criterion). In 2020, in the case of contracts valued below the EU thresholds, this approach was adopted for 70% (already 85% in 2021) of the procedures. In the case of contracts above the EU thresholds, it was 55% (65% in 2021). Three criteria were employed for 25% and 34% of the procedures, respectively, while four criteria were used in 3% and 8%. The remaining 2% of contract award procedures below the EU thresholds involved 5 to 30 criteria. The last 3% of contract award procedures exceeding the EU thresholds had 5 to 15 tender evaluation criteria. The most popular were criteria focusing on warranty or statutory warranty conditions (54% of procedures) in below-threshold procedures. Regarding contracts exceeding the EU thresholds, the most common non-price tender evaluation criterion was the lead time (38%).

Other criteria adopted by contracting authorities in 2020 were lead time in 29% of procedures for contracts below the EU thresholds and warranty or statutory warranty conditions for 35% of public procurement procedures for contracts exceeding the EU thresholds.

Other employed criteria were related to the subject matter's quality, functionality, or technical parameters. In the case of the procedures valued below the EU thresholds, the criteria were adopted for 10%. In the case of the procedures above the thresholds, it was 18%.

The weights of non-price evaluation criteria most often ranged from 20% to 30%. In 2020, the mean price weight was similar to that in previous years and amounted to 61% for the contracts below the EU thresholds and 62% for the contracts above the EU thresholds (Figure 1) [33,34].



**Figure 1.** Data on the extent of use of non-price tender evaluation criteria in Poland in 2020 (adopted form [33]).

## 5. Risk Management in Public Procurement

The mining industry is characterised by a high demand for various resources, e.g., machines, devices, and tools, necessary to implement mining and production processes. In the vast majority of cases, these resources have high purchase or service costs, which is why it is so essential that the development of risk management, adequate to a specific order, is an essential element in the public procurement procedure.

Risk as a research category is interdisciplinary, defined depending on the needs or financial discipline. The literature on the subject treats risk as a threat but also as an opportunity to achieve a result that is better or worse than expected [35]. The intention of every business entity should not be primarily to avoid threats but to increase the chance of achieving the desired effects. It should be emphasised that risk cannot be avoided and can only be limited, although it is impossible to reduce it to zero. That is why conscious and systematic risk management is so crucial in order to protect the organisation against various threats and, at the same time, take advantage of emerging opportunities. Furthermore, it is essential to distinguish between uncertainty and risk. According to a representative of the Chicago School of Economics, Frank H. Knight, while uncertainty cannot be measured and probability calculations cannot be applied, in the case of risk, the probability of its occurrence can be determined [36].

Risk management can be looked at from a subjective and objective perspective. The subjective (institutional) dimension will refer to the indication of persons authorised to perform activities related to risk management on the part of the group of ordering parties and contractors, as well as the relations between them in terms of risk sharing. The main initiator in the field of risk control in public procurement as part of maintaining management control is the manager of the contracting entity. The internal auditor should support its activities by systematically assessing management control and advisory activities. The ordering party's manager involves the company's management staff in the risk management process. In addition, other employees are most often obliged to participate in reporting potential threat areas. In turn, for contractors applying for a public contract, calculating offer costs based on the analysis of various types of risk is a natural element of the competitive public procurement market pricing strategy.

In turn, the objective aspect of risk management includes the risk management system implemented in the enterprise. It requires the creation of appropriate control measures (mechanisms) to ensure management structures, procedures, and policies, coordinated tasks within individual organisational units with an assigned scope of duties, rights and

responsibilities of employees, and appropriate flow of information and documentation. The documentation of the management control system mainly consists of written internal procedures contained in resolutions, orders, regulations, instructions, authorisations, decisions, scope of activities, official orders, and other internal documents.

Examples of types of risks that may appear during the public procurement procedure, depending on the implementation stage, can be presented as follows [37]:

- Preparation of public procurement proceedings (risk): appointment of inappropriate people to the tender committee, underestimation of the value of the contract, incorrect description of the subject of the contract, and incorrect description of the conditions or criteria for evaluating offers;
- Conducting the procedure (risk): incorrect tender documentation, failure to meet deadlines, selection of an offer that is not the most advantageous (only the price criterion), and invalidation of the procedure;
- Implementation of public procurement (risk): risk of improper payment of the contractor's remuneration and failure to impose penalties due to failure to meet deadlines.

Risk management is directly related to the in-depth analysis and assessment of risk occurrence. It is based on risk assessment by determining the probability of a condition occurring where the risk is higher than a threshold level and the possible consequences that may occur. The assessment of risk types will make it possible to rank them and prepare a graphical risk matrix indicating the types of risk that require additional actions, the risks for which special monitoring is necessary, and the risks that are irrelevant to the assumed goals.

After assessing and ranking the types of risk, priorities for a given organisation are revealed, which should result in an appropriate response (action) concerning each identified risk area. This will be risk avoidance (the decision not to take the risk and suspend the process or activities related to it), risk reduction (removing the source of threats, reducing the probability of risk occurrence and its effects), risk transfer (sharing the risk with another partner or several partners through contracts) or co-financing risk (e.g., by concluding an insurance contract), and risk acceptance or its compensation (acceptance of a risk situation, especially when there is an opportunity to achieve some benefit) [38].

In response to specific risks identified in the area of public procurement, appropriate control mechanisms should be implemented, including:

- Introducing internal regulations regarding the spending of public funds covered by the Act;
- Participation in the work of the tender committee of at least two people from the public procurement unit as part of the so-called self-control of employees;
- Using checklists to detect and correct possible errors made during the proceedings (before concluding the contract);
- Written documentation of procedures excluded from the obligation to apply the Act;
- Introducing controls in contractual provisions which gives the ordering party the right to verify the contractor's obligations, e.g., in the case of an offer declaration constituting a criterion for evaluating offers (e.g., the delivery date and the calculation of contractual penalties).

## 6. Evaluation of Public Procurement Tenders in the Polish Mining Industry

The mining industry is part of the industry that excavates minerals from the ground or other locations in the environment. Mineral resources are used in countless sectors, such as the metallurgical, construction, energy, chemical, and pharmaceutical industries. It handles various materials, including coal and other fossil fuels, metal ores like iron, copper, zinc, aluminium, halite, potash salt, building stones, and many others [39]. The mining industry significantly affects the natural environment. Therefore, it often involves special regulations for public procurement, including public tender procedures.

The Polish legal system has detailed regulations for public procurement in the mining industry. In this regard, the Common Procurement Vocabulary is used, which is a pri-



mary tool for institutions responsible for public procurement. CPV codes involve a vast vocabulary for public procurement in the mining industry, for example, for mining of various elements and materials, such as calcium, salts, minerals, clays, precious stones, fuels, petroleum, or related mining and quarrying products (with CPV code 14500000–6) [40].

Note also that according to the Article 5 paragraph 4 point 7 of the Public Procurement Act [5], its regulations apply to utilities, including public contracting authorities, to perform utility activities. According to the Act, utility activity includes fuel mining involving mining of petroleum or gas and their natural related products and prospecting for or mining brown coal, hard coal, or other solid fuels. Therefore, issues related to the mining industry should be considered in the context of utility contracts in the Polish public procurement system.

Note additionally that prospecting and mining of fuels require a licence in Poland. These activities are strictly regulated under the Geological and Mining Law [41]. It means that the Public Procurement Law regulates fuel mining activities by unique or exclusive rights. As indicated by A. Zaborowska, the scope of activities in the “fuel mining” sector and the definition of unique or exclusive rights have remained unchanged since 2004 when the previous Act was enacted. Therefore, the mining industry remains subject to public procurement procedures under the new Public Procurement Act [42].

Mining industry public procurement involves various tender evaluation criteria, such as price, quality, timeliness, warranty conditions, and extraction methods. In some cases, such as purchasing mining equipment, the contractor’s ability to supply speciality machinery necessary for a project is critical. Public procurement in the mining industry often involves risk for both the contractor and the contracting authority. The risk follows that mining projects are usually very costly and complex, involving geological surveys, infrastructure construction, mining operations, etc.

Moreover, this branch is typically heavily regulated by national law, so contractors must meet numerous requirements and adhere to many regulations, which is costly and time-consuming. To minimise the risk, the contractors and contracting authorities often use specimen contracts designed for the public sector. The specimen contracts specify terms and conditions such as the price, lead time, payment terms, qualitative requirements, and other critical aspects of the project. Therefore, apart from the tender price, the contracting authority must take into consideration the qualitative aspects of the goods and services offered by contractors in a public tender procedure [43].

Today, the largest state-controlled mining companies involved in the mining of solid minerals are KGHM Polska Miedź S.A. (copper, silver), Jastrzębska Spółka Węglowa S.A. (JSW S.A.) (hard coal), PGE Górnictwo i Energetyka Konwencjonalna S.A. (brown coal), Polska Grupa Górnicza S.A. (PGG S.A.) (hard coal), Tauron Wydobycie S.A. (hard coal), Lubelski Węgiel Bogdanka S.A. (hard coal), and “Kłodawa” Salt Mine S.A. (rock salt).

#### 6.1. KGHM Polska Miedź S.A.

KGHM Polska Miedź S.A. has two documents with guidelines for public procurement, including public tender procedures for specific projects, Guidelines for Selecting Tenderers in KGHM Polska Miedź S.A. [44] and Guidelines for Selecting Work and Service Contractors in the KGHM Polska Miedź S.A. Group [45]. Both of them specify that the contracting authority selects the most advantageous tender based on tender evaluation criteria specified in the procedure specifications, and the tender evaluation criteria are price (remuneration) or price (remuneration) and other criteria related to the subject matter of the contract. The selection criteria must be countable unless the nature of the subject matter accommodates substantive criteria. Additionally, the contracting authority evaluates the tender with TCO analysis (Total Cost of Ownership) if possible. Nevertheless, an analysis of the available specifications for published tender procedures revealed that they all contain a regulation that the contracting authority selects the most advantageous tender based on the price criterion with a weight of 100%. Hence, it offers no price-unrelated tender evaluation criteria.

## 6.2. JSW S.A.

In JSW S.A., the principles of public procurement are codified in Regulations for Preparing and Conducting Tender Procedures Not Covered by the Public Procurement Act in Jastrzębska Spółka Węglowa S.A. [46]. This document states that the most advantageous tender is the one with the most advantageous balance of price and other criteria related to the subject matter of the contract or the tender with the lowest price or cost if price or cost is the sole criterion. Regrettably, it fails to list any “other criteria” available for tender evaluation. Similar to KGHM S.A., JSW S.A. only uses price with a weight of 100% in the tender procedure documentation it published (both regulated and not by the Act).

## 6.3. PGE Group

The general procurement procedure in PGE Group [47] requires that other criteria be taken into consideration in addition to price. The evaluation criteria must be related to the subject matter of the procurement procedure. They may concern:

- (a) Qualitative criteria and price or cost;
- (b) Price or cost;
- (c) Other aspects related to the subject matter of the procurement contract.

The document defines that qualitative criteria may include those related to quality, including technical parameters, aftersales service, technical support, and delivery or work conditions (such as deadline, manner or time of delivery, lead time, aesthetics and functionality, social, environmental, and innovation aspects, organisation, qualifications, and experience of persons involved in the performance under the contract if they can affect the quality). It further allows the contractor selection to be based on price or non-price criteria, particularly those related to quality, functionality, methodology, and creativity of the proposed solution and characteristics of the contractor, including its experience. As opposed to guidelines in KGHM S.A. and JSW S.A., the regulations of PGE provide for contracting authority specification of tender evaluation criteria and weights assigned to each criterion to determine the most advantageous tender in purchase notice or contract specifications. Still, the contracting authority is not obliged to notify contractors before the opening of tenders about the details of the criteria evaluation method set in in-house documents for the procurement procedure. An analysis of the tender procedures published by PGE S.A. revealed various approaches to tender evaluation. One of the methods is the standard approach of price only. The contract specifications make it clear that the contracting authority will use the gross price criterion with a weight of 100% to select the most advantageous tender. In contrast, some contract specifications set the following Equation (1) for tender evaluation using the price criterion:

$$C_p = \frac{A}{B} \cdot \text{criterion weight\%} \cdot 100 \quad (1)$$

where  $C_p$  is the score for the price criterion,  $A$  is the lowest net price among all not rejected tenders, and  $B$  is the net price of the evaluated tender.

Still, the weight of price is 100% in most cases. In one case, however, the tender evaluation was set to be based on:

- Design and execution price: 75% of the total score;
- Functionality and innovativeness of the proposed technical solutions: 15%;
- Warranty terms: 5%;
- Environmental impact assessment: 5%.

## 6.4. Polska Grupa Górnicza S.A.

The next investigated company is Polska Grupa Górnicza S.A., which codified its public procurement and public tender principles in Regulations on Contract Awarding Procedures in Polska Grupa Górnicza S.A. [48]. The document provides contractor selection criteria in the form of price or price and other criteria that guarantee the most advanta-

geous tender in terms of economy and quality, in particular: (1) quality, (2) functionality, (3) technical parameters, (4) environmental aspects, (5) social aspects, (6) innovative aspects, (7) operational costs, (8) technical service, (9) lead time, (10) contractor's experience, and (11) contractor's expertise. It further includes a regulation that if technical criteria of tender evaluation are used, the procurement board defines a list of documents that need to be appended to the tender to confirm the correct selection of the most advantageous tender (including plans, designs, drawings, models, samples, equations, software, and other similar inputs). Still, an analysis of tender procedures that were published by PGG. S.A. revealed that price was the only criterion employed and had a weight of 100% in each case.

#### 6.5. Tauron Wydobycie S.A.

In Tauron Wydobycie S.A., the principles for public tender procedures are regulated by the Contract Awarding Regulations of TAURON Group [49]. According to the document, the typical tender evaluation criteria are price combined with other criteria related to the subject matter, in particular, quality, functionality, technical parameters, use of the best possible technologies in terms of environmental impact, operating costs, technical service, and the impact of the proposed performance method. In special cases, the contracting authority may be obliged to consider social criteria. This involves criteria that award bonus points to tenders from social economy entities, such as businesses that employ people with disabilities, the unemployed, or persons referred to in regulations on social employment. In contrast to the previous companies, Tauron Wydobycie S.A. included in its regulations a surprising provision that tender evaluation criteria must not be related to the characteristics of the contractor, especially its economic, technical, or financial reliability, and must not limit competition through requirements exceeding the necessary capabilities needed to perform under the contract that would discriminate against contractors. Yet, every tender procedure published by Tauron Wydobycie S.A. specifies a single criterion for tender evaluation, that is, tender gross price (weight 100%).

#### 6.6. Lubelski Węgiel Bogdanka S.A.

The last investigated coal mining company is Lubelski Węgiel Bogdanka S.A. with its Regulations on Tender Procedures in Lubelski Węgiel Bogdanka S.A. Not Covered by the Public Procurement Act [50]. It provides tender evaluation criteria such as price, technical parameters, operating costs, technical service, and lead time. Still, an analysis of tender procedures published by Lubelski Węgiel Bogdanka S.A. revealed that price was the only criterion employed and had a weight of 100% in each case.

#### 6.7. "Kłodawa" Salt Mine S.A.

One of the analysed state-controlled mining companies is "Kłodawa" Salt Mine S.A., the largest operational halite mine in Poland. Its public procurement principles are codified in Regulations on Tender or Negotiation Procedures for the Supply of Materials, Spare Parts, and Finished Products and Works and Services for "Kłodawa" Salt Mine S.A. [51]. According to this document, the tender evaluation criteria include (1) price, (2) payment period, (3) warranty period, (4) technical service, (5) use of the most appropriate technology, (6) transport costs, (7) lead time, (8) required securities, (9) economic and technical reliability and capability to perform under the contract, (10) certificates, licences, etc., and (11) other as deemed appropriate by the board. An analysis of tender procedures published by "Kłodawa" Salt Mine S.A. revealed various ways of tender evaluation. Price was, obviously, the key criterion in all the cases, but it never had a weight of 100%. Its weight was usually 80%, while warranty period and conditions amounted to 20%. Only once was the price weight 95% and the warranty period and conditions was 5%. The company calculated score weights for individual criteria with Equations (2) and (3).

$$P = \frac{P_l}{P_i} \cdot \dots \% \text{ of set criteria} \quad (2)$$

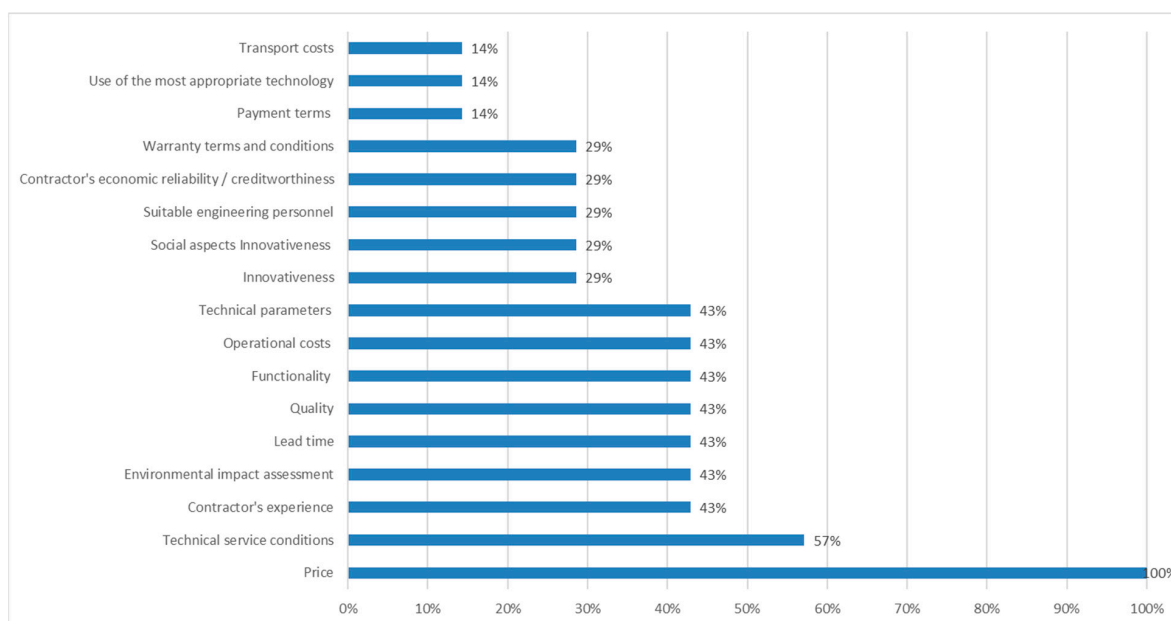
$$W = \frac{W_t}{W_h} \cdot \dots \% \text{ of set criteria} \quad (3)$$

where  $P$  is the price criterion,  $P_l$  is the lowest price,  $P_t$  is the price of the tender under evaluation,  $W$  is the warranty period criterion,  $W_t$  is the number of months in the tender under evaluation, and  $W_h$  is the highest number of months.

Another way for evaluating tenders at “Kłodawa” Salt Mine S.A. was a scoring system, where the lowest price was awarded 80 points and the other considered criterion was lead time. The shortest period below 2 weeks was awarded 20 points, a period of 3–4 was awarded 15 points, 5–6 weeks 10 points, 7–8 weeks 5 points, and more than 8 weeks 0 points. Such a diversified evaluation system at “Kłodawa” Salt Mine S.A. is flexible enough for the company to focus on those tender evaluation criteria it desires the most in a specific procedure. This system also eliminates the cheapest tenders, which put the company at risk of production delays and contractual penalties.

### 6.8. Summary

To summarise the analysis, the regulations in place at Polish mining state-controlled companies list numerous evaluation criteria that procurement boards should consider in public tender procedures. Naturally, price remains the fundamental criterion, but the business slowly accepts that some technical aspects are essential. As shown in Figure 2, price is closely followed by the technical service criterion, included in the tender regulations of four out of the seven companies. The third place is shared by criteria such as contractor’s experience, environmental impact assessment, lead time, quality, functionality, operating costs, or technical parameters of the machine or equipment included in three out of the seven regulations investigated here. Innovation, social aspects innovativeness, suitable engineering personnel, contractor’s economic reliability / creditworthiness, warranty terms and conditions, payment terms, use of the most appropriate technology, and transport costs were referred to very rarely, only in two regulations.



**Figure 2.** Tender evaluation criteria in the mining companies (original work).

## 7. Conclusions

Public procurement procedures facilitate the purchase of products, services, or civil works by public administrations. They follow the national rules specified in the Polish Public Procurement Act. They are intended to ensure a transparent purchase process, protect competition, and ensure effective use of public funds and equal treatment of all tenderers.

Public procurement aims to ensure a transparent and competitive purchasing process, effective use of public resources, equal treatment of all tenderers, and supply of the best products and services. Moreover, the process fuels the local economy and is consistent with the law and European Union directives. Its functions include market formation, protection of public interests, integration of businesses, and environmental or social governance. These functions are indispensable to achieve the purposes of public procurement, such as ensuring a transparent and competitive purchasing process, effective use of public resources, and supply of the best quality products and services.

In order to carry out its core activities, the mining industry announces tenders for resources with high purchase or service costs, which is why it is so essential that the development of risk management, which is adequate to a specific order, is an essential element in the public procurement procedure. Therefore, a SWOT (Strengths, Weaknesses, Opportunities, and Threats) analysis is often recommended as well. It is a tool used for analysing a project's external risks and determining the contractor's strengths and weaknesses. It is also worth emphasising that, for the public procurement procedure to be effective, competent employees must be delegated to carry it out, who have the appropriate knowledge and are loyal to their employer.

Mining remains one of the most dangerous professions in the world, with underground coal mines particularly notorious for high accident rates. The multitude of natural hazards in underground mines not only causes delays in the implementation of planned mining works but often poses a continuous risk to the health and life of employees. For this reason, the processes of purchasing products, services, or construction works (including mining works) must be rigorously controlled. Adopting appropriate procedures in public procurement in the mining industry is of great importance not only for work safety, but also for the company's financial situation because any failure of machinery and equipment causes delays in mining, which results in significant financial losses and thus increases the company's debt.

In light of the above, the hypothesis in the introduction is that a public procurement tender has to meet financial or economic requirements. However, more importantly, the qualitative aspects of tender evaluation have been confirmed. Contracting authorities from the mining industry need to take into consideration the qualitative aspects of the tender in addition to a low price and favourable financial terms for the project to be durable and safe instead of merely cheap. Unfortunately, price is still the most important criterion for evaluating offers in Poland. However, this is slowly changing, and some enterprises have found that social and technical aspects are also fundamental.

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