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RISK ANALYSIS IN THE SYSTEM OF OTHER (NON-PRICE) METHODS FOR EVALUATING TENDER PROPOSALS

Background. Non-price criteria are an important strategic tool for achieving social, environmental, and economic objectives. However, their practical application may be accompanied by a number of problems and risks. This study aims to identify the main problems and risks associated with the use of non-price evaluation criteria and to develop well-grounded recommendations in the context of establishing effective safeguards to neutralize or mitigate these risks.

Methods. The study employed the special legal method for analyzing the regulatory framework, case analysis to examine specific procurement examples, the statistical method for processing empirical data, as well as a systems approach to generalize findings and formulate reasoned proposals.

Results. An analysis was conducted of the regulatory framework, statistical data, and individual practical cases related to the use of non-price criteria in evaluating tender proposals in Ukraine and EU member states. The research showed that, despite the formal recognition of the advantages of this tool, its practical application remains limited due to legal uncertainty, low awareness among contracting authorities, and the risk of abuse. Even the positive experience of European countries demonstrates that the active use of non-price criteria does not always guarantee successful outcomes and, in some cases, leads to distorted bidding results. At the same time, under conditions of proper regulation and effective procurement oversight, non-price criteria can become a powerful tool for shaping a transparent, results-oriented, and socially responsible procurement system.

Conclusions. Public procurement practice in Ukraine demonstrates a low level of application of non-price evaluation criteria, which is driven by legal ambiguity and the risk of abuse. To improve the situation and encourage more frequent use of non-price criteria by contracting authorities, it is essential not only to adopt European approaches but also to ensure appropriate conditions for their implementation through comprehensive reforms.

Keywords: public procurement, evaluation of tender proposals, non-price criteria, life-cycle cost, risks, Prozorro, competitiveness, European integration.

Background

Ukraine's association with the European Union seeks the rapid alignment of national legislation with EU standards across all socio-economic spheres. In this context, the harmonization of legal regulation in the public procurement system is considered one of the priority tasks on the path to European integration, as it is part of the first negotiation cluster, "Fundamentals of the accession process to the European Union".

According to the provisions of the Association Agreement, Ukraine has committed to aligning its procurement policy with the standards of the European Union, which place considerable emphasis on the use of non-price criteria for evaluating tender proposals. These criteria shift the focus beyond price, enabling the selection of the most economically advantageous offer by also considering quality, innovation, environmental impact, social responsibility, and other factors. This approach delivers long-term value for money and supports the state's sustainable development.

However, the introduction of non-price criteria is not without risks. On one hand, it requires complex formulation and justification of criteria; on the other, it demands high qualifications from procurement participants. There is a risk of abuse in setting specific criteria and complications in challenging procurement decisions. Therefore, it is critically important for Ukraine not only to formally implement

European approaches but also to build institutional capacity for their effective application. This requires clearly defining the procedures and methods of applying non-price evaluation criteria in legislation, training procurement personnel, and increasing transparency at all stages of the procurement process.

The aim of the work is to identify the key problems and risks associated with the use of non-price criteria for evaluating tender proposals in the public procurement system and to formulate reasoned recommendations to neutralize potential threats and minimize their impact on procurement outcomes.

Literature review. The European development vector is defined as a strategic priority of Ukrainian statehood, opening broad opportunities for the country's socio-economic growth and contributing to increased living standards. The signing of the Association Agreement between Ukraine and the European Union marked the beginning of a new stage of bilateral cooperation and demonstrated Ukraine's readiness for radical reforms, primarily requiring the modernization of the national legal framework and its alignment with EU standards. Issues related to the adaptation of Ukraine's economy to EU standards were studied in the works of Novikova (2016), Mytsiuk and Mehey (2018). In particular, the harmonization of EU legislation in the field of public procurement with Ukrainian legislation was addressed in the study by Roshyan (2023).

Public procurement plays a special role in the system of economic governance, as a significant portion of budgetary resources is reallocated through procurement annually. In EU countries, public procurement accounts for 14% of GDP, amounting to 2 trillion euros, making it one of the main drivers of employment and economic growth in the European Union (European Court of Auditors, 2023). This underscores the need for adequate control and risk management in the public procurement system.

In this context, particular academic value lies in publications from the Journal of Public Procurement – a leading international peer-reviewed journal indexed in Scopus, which specializes in public procurement research. In particular, Paraskeva and Tsoulfas (2025), in their article, explore the key challenges and risks arising at various stages of procurement and propose ways to minimize them. They highlight the need for greater transparency, digital innovation, and higher professional standards among procurement personnel. The authors stress that strengthening these aspects is critical for reducing vulnerabilities – especially in the context of combating corruption risks, which remain among the most pressing challenges in public procurement. Corruption risks and their consequences in public procurement were analyzed by Gnoffo (2021), while Heikkinen and Halonen (2025) highlighted the importance of trust in the procurement process and in the judicial review system. Lack of trust negatively affects the willingness of businesses to participate in tenders, undermining competition, the efficient use of public funds, and the achievement of broader goals such as sustainable development.

An important tool for the efficient use of public funds is the application of non-price criteria in the evaluation of tender proposals. In particular, Baranovsky et al. (2020) devote significant attention to the implementation of the "value for money" principle, which consists in achieving maximum benefit from the available funds by assessing not only the price criterion but also the long-term efficiency of procurement. A similar approach is supported by Karlin (Karlin, 2021), who notes that the use of a multi-criteria evaluation system helps better account for the qualitative characteristics of proposals and reduces the risks of concluding contracts with unscrupulous suppliers.

This issue is of particular importance in the construction sector, which is characterized by complex working conditions, high competition, heavy workloads, and numerous challenges during project implementation. An unsuccessful choice of contractor can lead to delays, cost overruns, a decline in work quality, disputes, and additional expenses for the client. In his study, Oz (2024) analyzes this problem in detail and proposes an innovative model for evaluating tender proposals that allows for achieving an optimal balance between price and quality, reducing the likelihood of engaging unreliable contractors, and increasing the chances of successful project implementation in the challenging conditions of the construction industry.

However, achieving the optimal balance between price and quality is only one of the advantages that can be realized through the use of non-price criteria in tender evaluation. Another advantage is that such criteria help achieve broader social goals, such as fostering innovation, promoting environmental initiatives, and strengthening social responsibility – a point stressed by Brzeziński (2024). The implementation of such goals not only increases social welfare but also helps form a positive image of the authorities and demonstrates to voters their willingness to act in the public interest. This, in turn, builds political support

for using non-price criteria, as noted by Lerusse and Van de Walle (2022).

In Ukraine, unfortunately, despite the legal right to apply non-price evaluation criteria, their use in practice remains less common than in European countries. At the same time, the results of individual studies indicate significant potential for their use in addressing urgent social issues. In particular, in the context of environmental degradation, the implementation of protective measures is becoming increasingly relevant. This issue was addressed by Kharchenko et al. (2023), who analyzed the specifics of applying non-price criteria to implement environmental protection measures in the road sector and proposed integrating the European Union's "Green Public Procurement" criteria into the design, construction, and maintenance of roads.

Thus, the review of the cited literature makes it possible to outline the key advantages of applying non-price evaluation criteria. At the same time, along with studying the positive aspects, the effective use of such criteria requires a thorough analysis of the existing challenges, which, in turn, necessitates further research aimed at identifying risks and developing effective mechanisms for their mitigation.

Methods

To achieve the stated goal, the article applies a set of interrelated research methods that ensure a systemic analysis of issues related to the application of non-price criteria in public procurement. The special legal method was used to analyze Ukrainian and EU legal acts, including Directive 2014/24/EU, the Law of Ukraine "On Public Procurement", and the Association Agreement. Case analysis was used to examine specific procurement cases and identify common violations and deficiencies in the practical application of non-price criteria. The statistical method processed data obtained from the BI Prozorro analytics module and the European Court of Auditors report, enabling the identification of quantitative indicators and trends. A systems approach was used to synthesize findings and develop practical recommendations for improving the application of non-price evaluation mechanisms.

Results

The Association Agreement between Ukraine and the European Union includes Ukraine's obligation to gradually adapt its procurement legislation to EU norms and standards. Under this agreement, Ukraine must ensure a transparent, competitive, and non-discriminatory procurement system based on principles that guide procurement in EU countries (Verkhovna Rada of Ukraine, 2014).

Currently, the main legal act regulating public procurement at the EU level is Directive 2014/24/EU (European Parliament & Council of the European Union, 2014). It sets general procurement rules and emphasizes the efficient and rational use of funds. Article 67 of this directive states that contracts must be awarded based on the most economically advantageous tender (European Parliament and Council of the European Union, 2014). This refers not only to price but to all qualitative and technical characteristics that best meet the purchaser's needs. EU law provides two additional evaluation methods besides the traditional price-based approach: life-cycle costing (LCC) and the price-quality ratio.

Life-cycle costing accounts not only for the purchase price of goods, works, or services but also for all related costs from acquisition to disposal. These may include transportation, installation, operation (e.g., energy consumption, maintenance), and disposal (e.g., waste treatment) costs. Considering future expenses enables

contracting authorities to evaluate economic viability more objectively and make procurement decisions with long-term benefits in mind. However, implementing this method requires in-depth analysis and may involve risks.

LCC-based procurement is typically used when a long-term use of the procured item is expected. This requires suppliers to take on extended obligations, with the risk that they may fail to fulfill them. This justifies setting additional qualification requirements for bidders, such as financial stability and experience. It is advisable to include contractual guarantees to ensure performance throughout the life cycle of the item. The contract should clearly define the scope, frequency, and nature of services, and provide a mechanism for transferring obligations if the original supplier ceases operations. Compensation terms should also be outlined if the buyer does not agree to supplier replacement.

An alternative approach is evaluating tenders based on the price-quality ratio as set out in Directive 2014/24/EU. Evaluation criteria may include product quality, design,

innovation, environmental or social characteristics, and staff qualifications. The buyer can select multiple relevant indicators, assign a weight to each, and calculate a weighted score to assess offers comprehensively. However, excessive discretion in defining non-price criteria can create corruption risks. It allows for arbitrary exclusion of bidders based on vague or narrowly tailored criteria, undermining fair competition and transparency. In such cases, procurement may serve pre-selected contractors, violating the principles of equality and non-discrimination.

According to the European Court of Auditors Report No. 28/2023, the share of procurement procedures in the internal market of the European Union with only one bidder increased from 23.5% to 41.8% during the period 2011-2021 (European Court of Auditors, 2023). A level above 20% is considered high in the European Union; therefore, the figure rose from high in 2011 to even higher in 2021. The highest rates were recorded in Slovenia, Cyprus, Poland, the Czech Republic, and Hungary (see Fig. 1).

Competition Indicator Trends 2011 - 2021: Single bidding (%)



Fig. 1. Share of procurement procedures in the internal market of the European Union with only one bidder in 2011–2021
Source: Special Report 28/2023 (European Court of Auditors, 2023).

An analysis was also conducted across specific economic sectors: construction, energy, engineering, financial services, health services, medical equipment, repairs, sewage services, transport equipment, and transport services. All of these sectors demonstrated a

significant increase in the number of tenders with only one bidder. The highest level of single-bid participation – with a continuing upward trend – was recorded in tenders related to repair works, where the share increased from 22% in 2011 to 47% in 2021 (see Fig. 2).

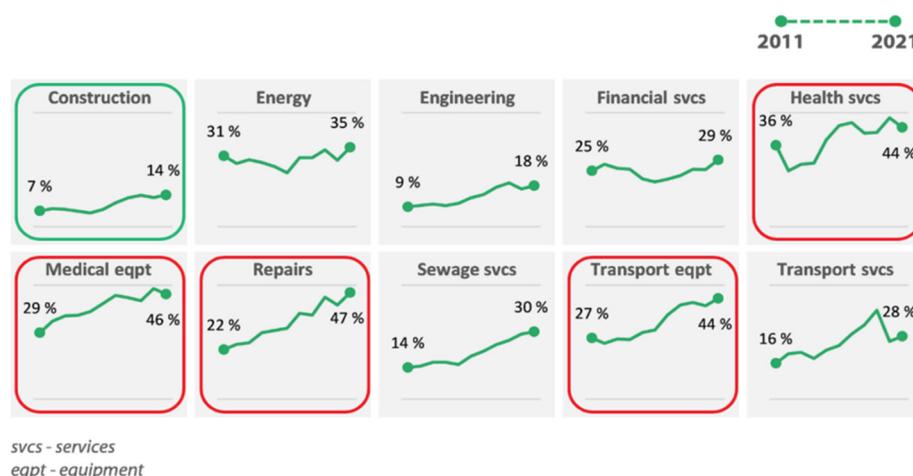


Fig. 2. Share of procurement procedures in the internal market of the European Union with only one bidder by sector in 2011–2021
Source: Special Report 28/2023 (European Court of Auditors, 2023).

According to information published on the official website of the European Commission, the situation regarding the share of tenders with only one bidder worsened further in 2023. Within the European Union, a satisfactory level is considered to be no more than 10% of such procedures out of the total number of procurements conducted; an average level is up to 20%, while exceeding

this threshold indicates an unsatisfactory state of market competition. In previous years, at least 3-4 EU Member States showed acceptable figures, but by the end of 2023, not a single country met the "satisfactory" criterion. In Figure 3, the bars represent the share of procurement procedures with only one bidder in various EU countries in 2023, identified by their ISO country codes.

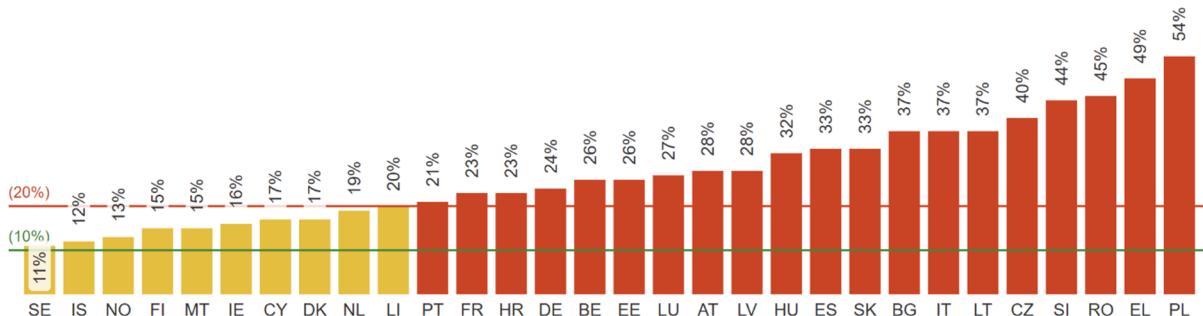


Fig. 3. Share of procurement procedures in the internal market of the European Union with only one bidder in 2023
Source: access to public procurement (European Commission, 2025).

The main reason for the low level of competition in public procurement, according to respondents, is the "restrictive requirements" set by contracting authorities. According to a study commissioned by the European Commission, it was found that 18% of procurement-related expenditures are losses caused by inefficiency, of which 13% are directly linked to corruption. One of the most common forms of corruption contributing to this inefficiency is collusion between the contracting authority and the supplier (UNESCO IIEP, 2021).

In Ukraine, the concept of non-price criteria in procurement is also not a new phenomenon, although the mechanism for their application is still undergoing reform in accordance with best practices of European Union Member States. The use of non-price criteria for evaluating tender proposals was already provided for in the laws regulating the procurement sector since the 2000s. In particular, such provisions were included in the Law of Ukraine "On the Procurement of Goods, Works and Services at the Expense of State Funds" dated 22 February 2000, the Law of Ukraine "On Public Procurement" dated 1 June 2010, and the Law of Ukraine "On Public Procurement" dated 10 April 2014. At present, the main legislative act governing this issue is the Law of Ukraine "On Public Procurement" dated 25 December 2015.

In the version of the Law of Ukraine "On Public Procurement" in force until April 19, 2020, the use of non-price criteria for evaluating tender proposals was significantly limited and allowed only in cases of complex or specialized procurements. This applied, in particular, to the procurement of consulting services, scientific research, experimental, or R&D work. The new version of the Law of Ukraine "On Public Procurement" greatly expanded the rights of contracting authorities to set additional evaluation criteria, allowing their use in any procurement procedure without mandatory justification. This liberalization, on the one hand, granted contracting authorities greater flexibility in considering the qualitative characteristics of the procurement item, but on the other hand, it led to the emergence of new corruption risks related to the potential for biased formulation of criteria to favor a specific supplier, and distortion of competition.

One illustrative example is the case involving the procurement of surgical inpatient services by a city clinical hospital (CPV code 021:2015: 85110000-3 – "Hospital and

related services"). The contracting authority initiated an open tender procedure using non-price criteria to assess the ability to provide services to overweight patients. Specifically, 30% was assigned for the ability to serve patients weighing over 240 kg, 15% – over 230 kg, and 10% – over 210 kg (Transparency International, 2021).

These requirements were challenged before the permanent administrative board of the Antimonopoly Committee of Ukraine. The complainant referred to statistical data indicating that patients weighing more than 240 kg constitute only about 1% of all patients, suggesting the criterion was unjustified. It was also noted that only one supplier on the market had the technical capacity to meet this requirement, effectively restricting competition. The board of the Antimonopoly Committee of Ukraine upheld the complaint and ordered the contracting authority to amend the tender documentation to eliminate the discriminatory provisions.

A somewhat similar case occurred in a procurement conducted by the municipal enterprise "Odesa CHP No. 2" for the supply of salt (CPV code 021:2015: 14400000-5 – Salt and pure sodium chloride). As an additional non-price criterion, the contracting authority specified that the "distance of the participant from the contracting authority's location must not exceed 50 km," giving this criterion the maximum allowable weight of 30% (Prozorro, 2022). However, it is difficult to determine exactly what benefit the contracting authority would have gained from including this criterion, since the tender documentation stipulated that the goods were to be delivered directly to the customer's address, and delivery costs were to be included in the total price. Under these conditions, the supplier's location had no objective impact on the effectiveness of contract performance, and thus the criterion did not improve the quality of procurement or bring any added value to the buyer. In this context, the debate arises whether the contracting authority intentionally formulated the requirement to artificially narrow competition in favor of a predetermined supplier, or whether the issue lies in a lack of understanding of the essence of non-price criteria and the rules for their proper use. When non-price criteria include only one option, a bidder is forced either to agree to that one option or be excluded from participation by the system, which contradicts the very concept of non-price criteria, which are intended to increase or decrease the

competitiveness of offers, but not to prevent participation in procurement altogether.

Overall, difficulties in understanding and practically applying non-price evaluation criteria remain common among contracting authorities in Ukraine. This is a key reason for the dominance of the traditional price-based approach to evaluating tender proposals. Statistical data from the BI Prozorro analytics module confirm this trend. In

particular, between 2016 and 2025, more than 2 million competitive procurement procedures were conducted, including open tenders, open tenders with specific features, and open tenders published in English (see Fig. 4). At the same time, only a small share (slightly more than half a percent) involved the use of non-price evaluation criteria (see Fig. 5).



Fig. 4. Number of competitive procurement procedures in Ukraine in 2016–2025

Source: access to public procurement data (BI Prozorro Analytics Module, 2025).

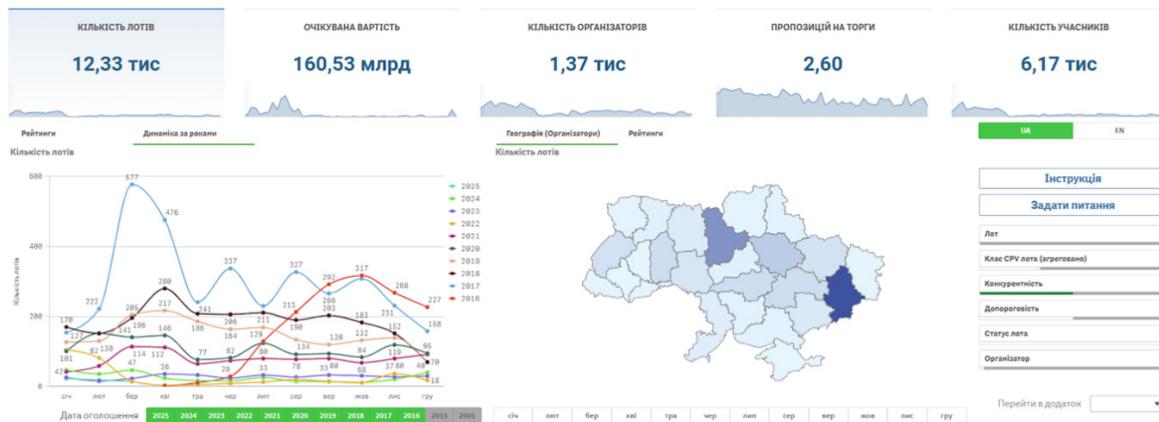


Fig. 5. Number of competitive procurement procedures in Ukraine in 2016–2025 using non-price evaluation criteria

Source: access to public procurement data (BI Prozorro Analytics Module, 2025).

Domestic contracting authorities often avoid using non-price criteria due to uncertainty about how to verify a participant's compliance. In some cases, this even leads contracting authorities to invent and include non-existent rules. For example, one of the grounds for rejection may be the reasoning that there is a "mismatch between the specific weight selected by the participant under the criterion "Total unit price value" and the format of the "Tender Proposal" submitted by the participant according to Annex No. 9 to the tender documentation" (Akademiia Radnyk, 2023).

Another issue faced by contracting authorities in applying non-price evaluation criteria in public procurement is the lack of understanding of which criteria they are allowed to select. For instance, Article 29 of the Law of Ukraine provides a specific list of non-price evaluation criteria, namely: payment terms, completion time, warranty service, technology transfer and training of managerial, scientific, and production personnel, as well as implementation of

environmental protection and/or social protection measures related to the subject of procurement (Verkhovna Rada of Ukraine, 2015). At the same time, the Ministry of Economy of Ukraine, in letter No. 3304-04/20327-06 dated April 2, 2021, clarified that this list is not exhaustive. However, the Antimonopoly Committee of Ukraine's board has already issued at least five decisions in which it effectively stated that contracting authorities may apply only those non-price criteria defined by the law.

These risks can be minimized by improving legislative regulation. The Law of Ukraine "On Public Procurement" should include a requirement for the contracting authority to justify the reason for applying each selected non-price criterion and specify whether the list of non-price criteria provided in Article 29 is exhaustive. This would help avoid an ambiguous interpretation of the law and reduce the risk of biased criteria designed to favor specific suppliers. In addition, it is necessary to regulate the procedure for verifying tender

proposals against selected criteria and introduce mechanisms for monitoring the integrity of contracting authorities by incorporating the relevant provisions either into existing legislation or through separate subordinate acts.

Another important step is to introduce systematic monitoring of procurements conducted using non-price evaluation criteria, with public reporting on common errors, violations, and best practices. Furthermore, in order to enhance the professional awareness of procurement participants, it is necessary to develop specialized training programs to ensure proper understanding of the essence of non-price evaluation criteria and the specifics of their practical application.

Discussion and conclusions

The results of the conducted study indicate that although non-price criteria for evaluating tender proposals are officially recognized as a tool for ensuring more efficient use of public funds, in practice, their application in Ukraine remains extremely limited. The main restraining factors are legal uncertainty, a low level of awareness among procurement participants regarding the application of non-price evaluation criteria, as well as the risks of abuse and distortion of competition. In such conditions, it is crucial to move from merely declaring the advantages of non-price criteria to creating real conditions for their effective and fair use.

Thus, it is critically important for Ukraine not only to formally implement European approaches but also to build institutional capacity for their proper application. This must be based on a combination of clear legislation, professional competence of procurement participants, and transparency and oversight at all stages of the procurement process. Only under such conditions can non-price criteria transform from a source of potential threats and risks into an effective tool for improving the quality of procurement.

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АНАЛІЗ РИЗИКІВ У СИСТЕМІ ІНШИХ (НЕЦІНОВИХ) МЕТОДІВ ОЦІНЮВАННЯ ТЕНДЕРНИХ ПРОПОЗИЦІЙ

Вступ. *Нецінові критерії є важливим стратегічним інструментом для досягнення соціальних, екологічних та економічних цілей, проте їхнє практичне застосування може супроводжуватися низкою проблем і ризиків. Метою дослідження є ідентифікація основних проблем і ризиків, пов'язаних із використанням нецінових критеріїв оцінювання, а також формування обґрунтованих рекомендацій у контексті формування ефективних запобіжних заходів для нейтралізації ризиків або зниження їхнього впливу.*

Метод. У процесі дослідження застосовано спеціально-юридичний метод для аналізу нормативно-правової бази, кейс-аналіз для аналізу конкретних закупівель, статистичний метод для опрацювання емпіричних даних, а також системний підхід для узагальнення результатів і формування обґрунтованих пропозицій.

Результати. Проведено аналіз нормативно-правової бази, статистичних даних та окремих практичних кейсів щодо застосування нецінових критеріїв оцінювання тендерних пропозицій в Україні та країнах – членах Європейського Союзу. Дослідження показало, що попри формальне визнання переваг зазначеного інструменту, його практичне використання залишається обмеженим через правову невизначеність, низький рівень обізнаності замовників і ризики зловживань. Навіть позитивний досвід європейських країн демонструє, що активне використання нецінових критеріїв оцінювання не завжди гарантує досягнення успішних результатів, в окремих випадках навпаки призводить до спотворення результатів торгів. Водночас за умови належного регулювання й ефективного контролю процесу закупівель, нецінові критерії здатні стати потужним інструментом формування прозорі, результативної та соціально орієнтованої системи закупівель.

Висновки. Практика публічних закупівель в Україні свідчить про низький рівень використання нецінових критеріїв оцінювання, що зумовлено правовою невизначеністю та ризиками зловживань. Для покращення ситуації та стимулювання замовників до частішого застосування нецінових критеріїв оцінювання важливо не лише адаптувати європейські підходи, а й забезпечити належні умови для їхнього застосування за допомогою впровадження комплексних реформ.

Ключові слова: публічні закупівлі, оцінювання тендерних пропозицій, нецінові критерії, вартість життєвого циклу, ризики, Prozorro, конкурентність, євроінтеграція.

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