

50.0/1

22 January 1999

ELECTRONIC PROCUREMENT
SECTION 3.2 OF THE COMMISSION COMMUNICATION "PUBLIC
PROCUREMENT IN THE EUROPEAN UNION"
[COM (98) 143]
UNICE POSITION PAPER¹

1. General Comments

First of all, UNICE once again stresses the overall importance of the introduction and development of Electronic Commerce in public procurement. As already stated in the first UNICE position paper on this subject dated 17 June 1998. Electronic Procurement should not be limited to one single electronic concept or technology.

In accordance with this general principle, solutions based on EDI (Electronic Data Interchange), CALS (Continuous Acquisition and Logistics Support) and internet/Intranet Solutions will all be of major importance for the development of Electronic Procurement (see UNICE paper of 17 June, Section 1).

Much of the technology forming the infrastructure for Electronic Commerce already exists or is being developed. Commerce and industry generally are moving towards its adoption; the system adopted for Public Purchasing should be compatible with that used elsewhere. Technical developments should thus be left to industry and the standards-making bodies; the Commission's role – a most important one – must be to ensure that the law provides proper protection whilst not preventing desirable developments.

2. Pilot Projects

2.1 After several years of discussing different approaches and models for future Electronic Procurement in the EU, UNICE believes that there is an urgent need to enter a new pilot project phase. While it is reported that some EU Member States intend to focus on national

¹ Following first UNICE Position Paper on this subject dated 17 June 1998.

projects, European Industry stresses the need to run projects at a pan-European level. It is of vital importance that the introduction of Electronic Commerce in the European procurement market should not be handicapped by splitting efforts into divergent national activities, thereby hindering the exploration of cross-border communication and business.

Examples from different sectors, e.g. automobile, aircraft and construction industry, show clearly the necessity for international or, at the very least, European approaches in questions of Electronic Commerce. This, for example, involves the number code systems needed to identify products and services in electronic procurement and to serve as basis for automated translations (multilingual electronic applications). As a consequence, European Industry strongly supports the European Commission in playing a major role in running and monitoring pilot projects in electronic procurement.

- 2.2. Among the proposals for pilot projects, a high priority should be given to the one designed in the EU/UN Working Group EEG 12 (Public Procurement). This is designed to be a true pan-European pilot project, testing the feasibility of electronic communication between contracting authorities and suppliers concerning tender documentation and tender return. The medical supplies sector has been chosen as a suitable application for this project.

Bearing in mind that the participants of the project will already have to bear their own costs, substantial financial support from the European Commission is needed to pay for the necessary technical experts to co-ordinate the project. Available EU funding should be focussed on this project, because it is of fundamental interest for all kinds of public procurement.

UNICE urges that this project be started without delay. The main task of the project should be to test the technical feasibility of the approach proposed in the pilot project. It should obviously be run within the framework of the existing EU directives on public procurement. For reasons of safety and caution – and in order to avoid the possibility of breaking existing EU law – the pilot project should be performed both in electronic and, in parallel, in paper form.

3. Legal framework for electronic procurement

3.1 Paper documents/electronic signatures

The primary consideration is that electronic communication in public procurement should be legally as valid as a paper document or a document containing a hand written signature.

Under proper conditions the use of an electronic signature should be regarded as a legally valid equivalent to the classic hand written form. Potential modifications of the EU directives to enable Electronic Commerce will have to give close consideration to the proposals for an EU directive on electronic signatures. While the current proposal for that directive allows for a variety of different levels of security for electronic signatures, in public procurement only electronic signatures with a high level of protection should be accepted.

3.2 Confidentiality of data/encryption

Security and confidentiality of data must be safeguarded very carefully according to the requirements of procurement law. The use of electronic signatures with a high level of security will almost certainly guarantee a high level of security in identification and authentication of documents. But there will still be the need to safeguard confidentiality of the data itself. Provision must be made for encryption at a level, which offers satisfactory protection against improper access.

3.3 Other aspects

Solutions for other aspects of the legal framework such as the law of evidence in civil procedure will need to be considered in the context of further discussions of the proposal for a EU directive on electronic signatures.

4. CPV

UNICE estimates the use of a unique number code system as a necessary and appropriate way to support Electronic Tendering. At present it is misleading that the EC is recommending the CPV, whereas from the legal point of view the use of the – elder – CPC and other number code systems are still obligatory. For reason of clarity the Commission should clearly state that the CPV is the exclusive number code system within the EC Directives on Public Procurement and that it replaces the other number codes still in use according to the wording of the present EC Directives on Public Procurement.

As is often reported that the CPV in practice still causes problems, UNICE welcomes that the CPV will be subject to a continuous revision. Notwithstanding the fact that the CPV is provided electronically meanwhile, it would be very helpful for users if the actual status of revision of the CPV were indicated by a revision number and the date of the revision.

5. Internet publication and reciprocity

The Internet offers a set of useful tools for electronic procurement. It is increasingly used as a means of publishing public tenders; European Industry welcomes this. Nevertheless, such open publishing may easily attract suppliers from countries whose markets are still closed to European suppliers. Therefore, in parallel with the ongoing transparent publication of European tender notices, the European Commission should strictly maintain the idea of reciprocity in its negotiations with non-EU and non-GPA countries, which still keep their markets closed.

6. Purchase profiles

UNICE welcomes the development of “purchaser profiles” published on the Internet as a useful way of providing information on potential customers in public procurement.

7. Involvement of third party providers/”informed intermediaries” in public procurement

Third parties acting as intermediate bodies between contracting authorities and suppliers will probably play an increasingly important role in public procurement. Such institutions, often called “informed intermediaries”, “service providers” or “value added services”, may be of benefit especially for small contracting authorities and small and medium sized enterprises.

They must, however, never be allowed to form a barrier between purchasers and suppliers; their role must always be justified by the value, which they add.

Notwithstanding the potential benefits of such institutions, contracting authorities and suppliers will need to put safeguards in place to ensure that the security and confidentiality of procurement data are maintained, and that they are never in a position to abuse the information which they collect and transmit.

As far as third parties are involved in encryption services, it has to be safeguarded that they strictly operate according to legal provisions and appropriate rules of ethics in computing.

8. Purchasing Cards, Catalogue buying

Purchasing cards and catalogue buying are new phenomena within public procurement. To some extent they may contribute to a simplification of public procurement, particularly for small procurements below a certain threshold. Nevertheless, UNICE would be concerned if the use of purchasing cards and catalogue buying were to affect adversely the well-established principle of priority of the open procedure in public procurement.

9. Electronic Payment

Electronic payment, an idea also derived from business-to-business transactions as well as the banking sector, will almost certainly contribute to a more efficient way of conducting public purchasing in future.

10. Final remark

Core questions of Electronic Procurement are shown up by this paper. Details still have to be discussed. UNICE is well prepared for further inputs and would therefore appreciate an intense dialogue with the Commission.
