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E-PROCUREMENT: THE NEW WAY FOR PUBLIC PROCUREMENT

Information and communication technologies allow public contracting authorities to improve the quality of their services and to modernise as well as to reduce the costs of procurement. Electronic procurement must however also be of advantage to the bidding companies. Suppliers should therefore be included in the discussion on the further development of electronic procurement.

UNICE is happy to support the introduction of new sections of the legislative package for electronic procurement throughout Europe and has the following remarks to add to the debate:

1. An initiative by the Commission on electronic procurement in Europe could lend important impetus to public contracting authorities and companies.
2. For a transitional period, until interoperability of systems for eProcurement will have been established in Europe, public contracting authorities should be advised to establish a set of guidelines on electronic data exchange together with the bidders in cases where an electronic procurement system is to be used; such guidelines do not govern the contractual terms but only the e-procurement procedures and need to address the following:
 - Identification of the parties;
 - Scope of application;
 - Provision and maintenance of communications systems;
 - Confidentiality;
 - Special protection measures:
 - Encryption;
 - Electronic signature;
 - Supplier data;
 - Terms as to:
 - The receipt of bids;
 - Handling of errors;
 - Liabilities;
 - Costs;
 - Third parties;
 - Period of validity, termination;
 - Written or electronically signed form for additions or amendments of the guidelines.
4. Introduction of electronic procurement under the legislative package should ensure the mutual compatibility of the technical systems of the bidding industry and the public contracting authorities. To make cross-border electronic procurement possible, there must be no technical, organisational or legal obstacles between Member States; the requirements set within the individual Member States should be harmonised to the greatest possible

extent and the use of inter-operable public procurement should be based on internationally recognized applications, forms and standards.

5. The new legislative package already contains important regulations for electronic procurement but an agreement on further details is needed as a basis for a well functioning of electronic procurement. The framework character of the new procurement procedures and other provisions contain the danger that differing interpretations as well as differing ways of national implementation might result in legal and technical obstacles for cross-border transactions. Provisions should be adopted as soon as possible to prevent that.
6. To promote and facilitate the use of interoperable public procurement solutions in Europe it is important to introduce a uniform e-signature or – if possible – to establish a framework for the use of different (but standardised) levels of e-signature in the area of electronic procurement. Tenderers prefer interoperability of electronic signatures and encryption so as to facilitate e-procurement in and between all Member States.
7. Regulations on how long electronic procurement documents are to be archived are another example of what is missing. It must be guaranteed that all data from electronic transactions can be reproduced over a long period of time. In the interests of a reliable audit trail of the procurement procedures, especially in the event of later legal disputes, back ups should be made of tenders and procurement notes.
8. The degree of encryption should be defined as a minimum-security requirement and this should be adapted to current technical developments from time to time.
9. Provision needs to be made for the protection of tenderers' data in the hands of the contracting authority. Tenderers should be able to require a purchaser to provide independent evidence of its ability to protect such data.
10. In implementing the legislative package, the Member States should be encouraged to take account of the needs of the bidding industry as far as both technical and organisational aspects are concerned. Specific attention needs to be paid to the differences between electronic and traditional processes in the companies. The various phases have to be addressed.
11. The willingness of potential bidders to participate in e-procurement can be encouraged by underlining the fact that the eprocurement process can guarantee that all bidders are treated in the same fair and equal way. Procedures guaranteeing that the bidder is automatically informed that the bid has been received and verification of the correctness of the bid, could also be considered as incentives to use eprocurement more. While not introducing preferential treatment of bidders the possibility of faster processing and examination of the bids submitted using eprocurement

procedures by the public contracting authorities could also be put forward as an advantage of using eprocurement.

12. The Commission should encourage the development of certification systems for the verification of compliance of procurement software with relevant provisions of the legislative package. Such instruments should be presented as soon as possible.
13. Successful implementation of electronic public procurement is not possible without supplier participation. Efforts must be made enable SMEs to take part in electronic procurement activities. Special attention must be paid to the introduction of electronic catalogues. It should not be mandatory to have electronic catalogues in order to take part in electronic procurement.