



Public Procurement

E-Procurement

CONTENTS

- [Electronic procurement](#)
- [Using e-procurement](#)
- [Examples of savings and improvements](#)
- [E-procurement in the Directive](#)
- [Electronic advertising](#)
- [Electronic availability of procurement documents](#)
- [Electronic submission of requests to participate and tenders](#)
- [eCERTIS – online repository of certificates](#)
- [European Single Procurement Document](#)
- [Procurement tools](#)
- [Electronic invoicing](#)
- [Further information](#)

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Electronic procurement

What is electronic procurement (e-procurement)? At its simplest, e-procurement is a catch-all term for the replacement, throughout the procurement process, of paper-based procedures with communications and processing that are based on information technology. E-procurement can be a tool to make processes more efficient and to promote the effectiveness of procurement.

E-procurement technology and processes can be used, where appropriate, at various phases of the procurement process, including publication of tender notices, provision of tender documents, submission of tenders and requests to participate, the evaluation process, notification of award, ordering, invoicing and payment.

Using e-procurement

Why use e-procurement? The use of e-procurement systems and processes can result in a number of advantages, including:

- **reduced administrative costs** of individual procurement procedures;
- **streamlined** procurement procedures;
- **faster** procurement procedures;
- **increased transparency**, by providing information about individual tender opportunities, but also providing a clearer picture of tenders on a wider basis;
- **better monitoring of procurement**;
- **encouragement of cross-border competition**, by reducing barriers presented by paper-based procurement processes;
- **support to the development of centralised procurement administration**, resulting in the potential reduction of costly back-office procurement functions and the good use of economies of scale in procurement administration;
- **wider administrative modernisation and simplification**, encouraging the integration of various administrative processes as well as the diffusion of information technology solutions within and by government and society in general.

Examples of savings and improvements

In 2010, the European Commission, in its Green Paper on e-procurement¹, provided examples of the benefits of the introduction of e-procurement, as shown below.

Italian Emilia Romagna's agency Intercent ER offers e-Procurement services including e-Marketplace, e-Catalogues and e-Auctions and is now the reference point for 539 administrations (90% of local agencies). In 2008 it processed transactions amounting to some EUR 419 million, delivering efficiency benefits of EUR 67.5 million and time savings of 45 man-years.

The Austrian Federal Procurement Agency centralises purchases for federal authorities through e-Procurement functionalities. In 2008 it reported savings of EUR 178 million against a procurement volume of EUR 830 million. Benefits seem to significantly outweigh the annual maintenance costs of EUR 5 million, which are less than 3% of the savings.

¹ European Commission (2010), *Green Paper on Expanding the Use of e-procurement in the EU*, COM (2010) 571 final, Brussels.

As of 1 February 2005, all contracting authorities in Denmark may only accept electronic invoices. This reform affects approximately 15 million invoices a year, and applies to the entire public sector, from ministries to nursery schools. The use of e-invoicing is expected to save the public EUR 100 million every year, on top of savings in internal administrative processes.

In Norway, the Ehandel platform is helping authorities to achieve 20-40% reductions in the time taken to handle orders, receipt of goods and invoicing and delivering price savings in the region of 2-10%.

In the UK, the Buying Solutions site reported in its 2008/09 annual report that it had facilitated sales of over GBP 5 billion, delivering GBP 732 million in savings. The UK also reported savings frequently exceeding 10% (and even up to 45%) through the use of e-Auctions and recently announced plans to use e-Auctions to save the taxpayer up to GBP 270 million by the end of 2011.

A Portuguese study compared the best bids for public works contracted by 50 Portuguese public hospitals in 2009 (using paper based systems) and 2010 (using e-Procurement). It concluded that a cost reduction of 18% had been achieved in 2010, due to the increase in competition generated by e-Procurement.

It is worth noting that savings such as those outlined above are commonly achieved by using a combination of e-procurement, framework agreements and central purchasing. For further information, see SIGMA Public Procurement Brief 19, *Framework Agreements*, and SIGMA Public Procurement Brief 20, *Central Purchasing Bodies*.

E-Procurement in the Directive

E-procurement and the 2014 reform of the procurement rules: While the 2004 Public Sector Directive² simply encouraged the use of electronic means in public procurement procedures, the 2014 reform of the procurement rules has introduced electronic means as the standard means of communication and information exchange in procurement procedures.

The European Union (EU) has incorporated significant changes in the 2014 Public Sector Directive (the Directive)³ to facilitate the use of e-procurement in tender processes. For that purpose, the Directive has **mandatory requirements** for:

- transmission of notices in electronic form;
- electronic availability of procurement documents;
- electronic submission of requests for participation and tenders.

Note: Implementation period for the rules on e-communication

Article 90 of the Directive sets out the periods for the implementation by Member States of the e-communication provisions.

The general period for the transposition of the Directive is 24 months, i.e. until 18 April 2016, but a 54-month period has been set for the implementation of the e-communication requirements. Member States may postpone the application of the mandatory e-communication requirements until 18 October 2018 at the latest.

There are exceptions to this 54-month postponement period: in cases where e-communication is mandatory under the Directive, i.e. for dynamic purchasing systems, electronic auctions (e-auctions), e-catalogues, procurement procedures conducted by central purchasing bodies,

² Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, 31 March 2004.

³ Directive 2014/24/EU on public procurement and repealing Directive 2004/18/EU, 26 February 2014.

drafting and transmission of notices, and electronic availability of procurement documents, the normal transposition period of 24 months applies, i.e. until 18 April 2016.

A special provision has been included with regard to central purchasing bodies, which are allowed only 36 months (instead of 54 months) to implement the Directive's provisions on e-communication. Member States may therefore postpone the mandatory e-communication requirements until 18 April 2017 at the latest for central purchasing bodies.

Finally, where a Member State chooses to postpone the application of e-communication requirements, it must nevertheless provide that contracting authorities may, in the interim, choose between the following means of communication for all communication and information exchanges: (1) electronic means, (2) post or other suitable carrier, (3) fax, or (4) a combination of any of those means.

Member States and contracting authorities remain free to go further if they wish to do so. However, the mandatory use of electronic means of communication does not oblige contracting authorities to carry out electronic processing of tenders, electronic evaluation or automatic processing. This obligation does not cover any stage of the public procurement process after the award of the contract or internal communication within the contracting authority.

The tools and devices to be used for communicating by electronic means, as well as their technical characteristics, must be non-discriminatory, generally available and interoperable with the information and communications technology products in general use, and they must not restrict economic operators' access to the procurement procedure. In all communication, exchange and storage of information, contracting authorities have to ensure that the integrity of data and the confidentiality of tenders and requests to participate are preserved.

Where contracting authorities require the use of tools and devices that are not generally available, they must offer alternative means of access.

Utilities

Similar provisions on electronic means of communication have also been introduced in the Utilities Directive . The transmission of notices in electronic form, electronic availability of procurement documents, and fully electronic communication – meaning communication by electronic means at all stages of the procedure, including the transmission of requests for participation and in particular the transmission of tenders (electronic submission) – have been made mandatory.

Electronic advertising

E-submission of notices: The Directive requires the publication of specified notices in the *Official Journal of the European Union (OJEU)* in relation to contracts that are of a type and value to which the EU procurement rules apply. These obligatory notices are generally required at the start of the procurement process, to notify economic operators of the opportunity available, and also at the conclusion of a procurement procedure. Other notices may be required, for example where a modification to an original contract notice was made or a dynamic purchasing system was terminated. Opportunities for contracting authorities to publish notices voluntarily in the *OJEU* are also available. See also SIGMA Public Procurement Brief 6, *Advertising*.

The standard form notices⁴ have to be drawn up and transmitted by electronic means to the EU Publications Office. Notices are published not later than five days after they are sent. The Publications Office is to provide the contracting authority with the confirmation of the receipt of the notice and of its publication.

All standard form notices for publication in the *OJEU* are available electronically on the SIMAP website⁵. The SIMAP portal provides access to the most important information on public procurement in the EU.

All notices published in the *OJEU* are publicly available online⁶. Economic operators can register on the website to be notified of relevant contract opportunities.

E-Advertising at national level

Many Member States either require or provide the option for additional e-advertising of contracts on national websites, including the websites of the national procurement agency or the gazette.

However, the notices must not be published at national level before they are published in the *OJEU*. Nevertheless, the publication may take place at national level where the contracting authorities have not been notified of the publication in the *OJEU* within 48 hours after confirmation of receipt of the notice.

E-advertising is also a common requirement for many contracts below the EU financial thresholds, as it is an inexpensive and transparent means of ensuring transparency and encouraging competition. See SIGMA Public Procurement Brief 15, *Below-Threshold Contracts*.

Advertising before the start of the formal procurement process, using a Prior Information Notice or a Buyer Profile: The Directive includes provisions permitting, but not obliging, a contracting authority to pre-warn the market place of potential future contract opportunities by using a Prior Information Notice (PIN).

Both the contracting authority and the potential economic operator benefit from advertising in advance in this manner, in particular as the PIN assists both sides in forward planning. If a PIN is used, in certain circumstances statutory tender timescales can be reduced.

It is in this context that the use of online **buyer profiles** can be particularly useful. A contracting authority may set up its own internet-based “buyer profile”. The profile will include general information about the contracting authority, together with information about ongoing invitations to tender, scheduled purchases, concluded contracts and cancelled procedures.

A contracting authority can publish the standard-form PIN on its buyer profile. When a contracting authority uses this approach, it only has to despatch a short, standard-form Buyer Profile Notice to the *OJEU*.

Member States may provide that sub-central contracting authorities or specific categories of such authorities may make the call for competition by means of a PIN in some procedures. These PINs as a call for competition must be published in the *OJEU* and not solely on the contracting authority’s buyer profile.

Advertising at the conclusion of the process: Contracting authorities must publish a contract award notice on the results of the procurement procedure not later than 30 days after the

⁴ Commission Implementing Regulation (EU) 2015/1986 of 11 November 2015 establishing standard forms for the publication of notices in the field of public procurement and repealing Implementing Regulation (EU) No. 842/2011.

⁵ www.simap.europa.eu

⁶ www.ted.europa.eu

conclusion of a contract or framework agreement. Again, this contract award notice must be published online in an electronic format, using standard forms.

In the case of framework agreements, contracting authorities are not bound to publish a notice of the results of the procurement procedure for each contract based on that agreement. Member States may provide that contracting authorities have the possibility to group notices of the results of the procurement procedure for contracts based on the framework agreement on a quarterly basis. These grouped notices are to be published within 30 days of the end of each quarter.

With regard to contracts based on a dynamic purchasing system, the publication of a contract award notice within 30 days is mandatory after the award of each contract. Again, such notices may be grouped on a quarterly basis, and the grouped notices are to be published within 30 days of the end of each quarter.

Electronic availability of procurement documents

Contracting authorities are obliged to offer by electronic means “unrestricted and full direct access free of charge to the procurement documents” from the date of publication of a contract notice or the date on which an invitation to confirm interest is sent⁷. The contract notice or the invitation must specify the internet address at which the procurement documents are accessible.

Circumstances where unrestricted and full, direct access free of charge by electronic means cannot be offered: The Directive includes an exhaustive list of circumstances where contracting authorities may indicate in the notice or in the invitation to confirm interest that the procurement documents will be transmitted by another means rather than by electronic means. Where confidentiality is the reason for not providing electronic access, the contracting authority is required to provide such information in the contract or in the invitation to confirm interest. The information must indicate which measures aimed at protecting confidentiality are required and how access to the documents can be obtained. In all circumstances where electronic means cannot be offered, the time limit for the submission of tenders is to be prolonged by five days, except in cases of duly substantiated urgency.

Electronic submission of requests to participate and tenders

The submission of requests to participate and tenders is to be performed by using electronic means of communication (see the note above on the implementation period for the rules on e-communication).

Exceptions to this obligation are set out in the Directive as follows, where:

- “due to the specialised nature of the procurement, the use of electronic means of communication would require specific tools, devices or file formats that are not generally available or supported by generally available applications”;
- “the applications supporting file formats that are suitable for the description of the tenders use file formats that cannot be handled by any other open or generally available applications or are under a proprietary licensing scheme and cannot be made available for downloading or remote use by the contracting authority”;
- “the use of electronic means of communication would require specialised office equipment that is not generally available to contracting authorities”;

⁷ This requirement concerns the availability of procurement documents where a PIN has been used as a means of calling for competition.

- “the procurement documents require the submission of physical or scale models which cannot be transmitted using electronic means”.

In the circumstances listed above, communication must be carried out by post or another suitable carrier or by a combination of those means and electronic means.

In addition, contracting authorities are not obliged to require electronic submission where the use of other means of communication is necessary “because of a breach of security of the electronic means of communications or for the protection of the particularly sensitive nature of information requiring such a high level of protection that it cannot be properly ensured by using electronic tools and devices that are generally available to economic operators”.

The contracting authority has to provide reasons for not using electronic submission in the individual report on the contract award procedure.

Requirements relating to tools and devices for e-submission

Annex IV of the Directive

“Tools and devices for the electronic receipt of tenders, requests to participate and the submission of plans and projects in design contests must at least guarantee, through technical means and appropriate procedures, that:

- (a) the exact time and date of the receipt of tenders, requests to participate and the submission of plans and projects can be determined precisely;
- (b) it may be reasonably ensured that, before the time limits laid down, no-one can have access to data transmitted under these requirements;
- (c) only authorised persons may set or change the dates for opening data received;
- (d) during the different stages of the procurement procedure or of the design contest access to all data submitted, or to part thereof, must be possible only for authorised persons;
- (e) only authorised persons must give access to data transmitted and only after the prescribed date;
- (f) data received and opened in accordance with these requirements must remain accessible only to persons authorised to acquaint themselves therewith;
- (g) where the access prohibitions or conditions referred to under points (b), (c), (d), (e) and (f) are infringed or there is an attempt to do so, it may be reasonably ensured that the infringements or attempts are clearly detectable.”

In addition, the following rules apply to tools and devices for e-submission:

- Information on specifications, including encryption and time stamping, must be available to interested parties.
- The required level of security in the various stages of the specific procurement procedure, proportionate to the risks attached, must be specified; where the level of risks, as assessed according to the previous bullet point, is such that advanced electronic signatures⁸ are required, contracting authorities are to accept advanced electronic signatures, supported by a qualified certificate, taking into account whether those certificates are provided by a certificate services provider that is on a

⁸ As defined in Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures.

trusted list⁹, created with or without a secure signature creation device, subject to compliance with the set conditions¹⁰.

E-CERTIS – online repository of certificates

E-Certis¹¹ is a free, online information reference tool that was launched by the European Commission in October 2010. This online tool provides details of the various certificates and attestations frequently requested in procurement procedures across the 28 Member States, some candidate countries, and countries that are members of the European Economic Area. It helps interested parties to understand what information is being requested or provided and to identify mutually acceptable equivalents.

In line with the Directive, with a view to facilitating cross-border tendering, Member States are obliged to ensure that the information concerning certificates and other forms of documentary evidence introduced in e-Certis is constantly kept up-to-date. Contracting authorities will have recourse to e-Certis and will require primarily such types of certificates or forms of documentary evidence that are covered by e-Certis. The use of e-Certis by contracting authorities will be made mandatory as from 18 October 2018.

European Single Procurement Document

Economic operators, especially small and medium-sized enterprises, find that one of the major obstacles to their participation in public procurement is the administrative burden derived from the need to produce a substantial number of certificates or other documents related to exclusion and selection criteria. To simplify the procurement process, the Directive has introduced a European Single Procurement Document (ESPD).

Contracting authorities must accept the ESPD as preliminary evidence in replacement of certificates issued by public authorities or third parties confirming that the relevant economic operator fulfils the following conditions:

- It is not in one of the situations in which economic operators shall be, or may be, excluded.
- It meets the relevant selection criteria.
- It fulfils, where applicable, the objective rules and criteria that have been set out for the reduction of the number of otherwise qualified candidates that are to be invited to participate.

The ESPD shall:

- Consist of a formal statement by the economic operator that the relevant grounds for exclusion do not apply and/or that the relevant selection criterion is fulfilled.
- Provide the relevant information as required by the contracting authority.
- Identify the public authority or third party responsible for establishing the supporting documents.
- Contain a formal statement to the effect that the economic operator will be able, upon request and without delay, to provide those supporting documents.

⁹ This list is provided for in the European Commission Decision of 16 October 2009 setting out measures facilitating the use of procedures by electronic means through the 'points of single contact' under Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market.

¹⁰ See Article 22(6)(c) of Directive 2014/24/EU for more details.

¹¹ <http://ec.europa.eu/markt/ecertis/login.do>

- Contain the information, such as the internet address of the database, any identification data and, where applicable, the necessary declaration of consent, where the contracting authority can obtain the supporting documents directly by accessing a database.

The ESPD, provided exclusively in electronic form and available in all languages on e-Certis, must be drawn up on the basis of a standard form established by the European Commission¹².

The contracting authority must accept the ESPD at the time of submission by candidates or tenderers of requests to participate or tenders. The contracting authority may nevertheless, at any moment during the procedure, ask tenderers or candidates to submit all or part of the supporting documents. It may do so wherever necessary to ensure the proper conduct of the procedure. Furthermore, before awarding the contract, the contracting authority must require the tenderer to which they have decided to award the contract to submit up-to-date supporting documents.

Contracting authorities must not require economic operators to submit supporting documents or other evidence where and insofar as the contracting authority has the possibility of obtaining the certificates or the relevant information directly by accessing a national database in any Member State that is available free of charge. A relevant database may be, for example, a national procurement register, a virtual company dossier, an electronic document storage system, or a pre-qualification system.

After having awarded the contract or concluded the framework agreement, the contracting authority must not require the economic operator that has been awarded the contract to submit supporting documents if the authority already possesses these documents. For that purpose, Member States must ensure that databases containing relevant information on economic operators that may be consulted by contracting authorities of that Member State may also be consulted, under the same conditions, by contracting authorities of other Member States. The list of those databases must be made available, and the list must be up-to-date in e-Certis.

See SIGMA Public Procurement Brief 7, *Selecting Economic Operators*, for more information on the qualification and selection of operators.

Procurement tools

Electronic auctions: An electronic auction (e-auction) is an electronic process that allows for the submission of new prices (revised downwards) and/or the submission of new elements of tenders, in both cases after an initial full evaluation of tenders has been undertaken. E-auctions occur at the final stage of a tender process, which has been conducted up to that point in accordance with one of the standard procurement procedures – the open procedure, restricted procedure and competitive procedure with negotiation, or in a mini-competition run under a framework agreement and in dynamic purchasing systems.

E-auctions involve an online electronic system that allows economic operators to submit new, downward-revised prices and/or other revisions to elements of their tenders for a particular contract. An e-auction is conducted in real time, and economic operators are in direct, anonymous competition with other economic operators.

E-auctions can only be used when the specifications can be established with sufficient precision. Only the elements of a tender that are suitable for evaluation using electronic means alone may be the subject of an e-auction. E-auctions should not be used for certain

¹² Commission Implementing Regulation (EU) 2016/7 of 5 January 2016 establishing the standard form for the European Single Procurement Document.

service contracts and certain works contracts dealing with intellectual performances, such as the design of works.

In all cases, in order to run an e-auction, the contracting authority must indicate in the original Contract Notice that it intends to use an e-auction.

Electronic catalogues: Electronic catalogues (e-catalogues) provide a format for the presentation and organisation of information in a manner that is common to all of the participating bidders and that lends itself to electronic treatment. They constitute a tool to facilitate public procurement, specifically (but not exclusively) as a means for participating in procurement through framework agreements or within a dynamic purchasing system.

At their simplest, e-catalogues are merely electronic versions of traditional paper-based catalogues that show the details of an economic operator's goods or services. A good example is where a contracting authority sets up a single-provider framework agreement, which is then operated using an e-catalogue set up by the provider, describing products and prices in a pre-agreed, structured manner. When purchasing under the framework agreement, buyers can access information online and, if electronic ordering is also available, they conduct the entire purchasing transaction online.

Potential advantages include the reduction of transaction and administration costs, the simplification of ordering processes, and the reduction of unauthorised purchasing outside permitted systems.

Where the use of electronic means of communication is required, contracting authorities may require tenders to be presented in the format of an e-catalogue or to include an e-catalogue. Furthermore, Member States may render the use of e-catalogues mandatory in connection with certain types of procurement.

E-catalogues have to be established by economic operators in accordance with the technical specifications and format established by the contracting authority, in compliance with the requirements for electronic communication tools.

Where contracting authorities accept or require the presentation of tenders in the form of e-catalogues, they have to state this information in the Contract Notice or in the invitation to confirm interest. They must indicate in the procurement documents all of the necessary information concerning the format, the electronic equipment used, and the technical connection arrangements and specifications for the e-catalogue.

Dynamic purchasing systems: The Directive contains specific provisions covering the establishment and operation of dynamic purchasing systems (DPS). Rules governing DPS have been significantly adjusted in relation to the previous Directive (2004/18/EC), in order to enable contracting authorities to take full advantage of the possibilities afforded by that instrument.

A DPS is a completely electronic system that can be used for repeated, standardised purchases, the characteristics of which, as generally available on the market, meet the requirements of the contracting authorities.

A DPS operates rather like a live, online, internet-based framework agreement, which economic operators can join at any time. It may be divided into categories of products, works or services, defined on the basis of characteristics of the procurement to be undertaken under the category concerned. Such characteristics may include reference to the maximum allowable size of the subsequent specific contracts or to a specific geographic area in which subsequent specific contracts will be performed.

In order to procure under a DPS, contracting authorities have to follow the rules of the restricted procedure. The restricted procedure is used to appoint economic operators that are free to apply to join the system at any time by submitting requests to participate. All of the

candidates satisfying the selection criteria are to be admitted to the system. All economic operators, throughout the entire period of validity of the DPS, must have the possibility of requesting to participate in the system. No charges may be billed prior to or during the DPS period of validity to the economic operators interested in, or party to, the DPS.

When a contracting entity wishes to award a contract using a DPS, it invites all admitted participants – or participants having previously been admitted to the specific category of works, products or services – to submit a tender for each specific procurement. The contract is awarded to the tenderer that submitted the best tender on the basis of the award criteria.

See also SIGMA Public Procurement Brief 11, *Procurement Tools*.

Electronic invoicing

The Directive does not include obligations related to electronic invoicing (e-invoicing), apart from a requirement to include information on the acceptance of e-invoices in the contract notice, when appropriate. However, Directive 2014/55/EU on electronic invoicing in public procurement provides that Member States must ensure that contracting authorities and entities receive and process electronic invoices that comply with the EU standards on e-invoicing.

Further information

Publications

SIGMA (2015), *Public Procurement Training Manual* – Module C4, OECD Publishing, Paris, <http://www.sigmaweb.org/publications/public-procurement-training-manual.htm>

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Webpage one-procurement, <http://ec.europa.eu/growth/single-market/public-procurement/e-procurement/>