

The System of Public Acquisitions by Means of Electronic Bids in the Light of European Regulations

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Costantin Roman

Conferențiar universitar doctor

Aureliana Geta Roman

Lector universitar doctorand

Academia de Studii Economice București

Abstract. *E-commerce can lead in many different ways to cost reduction in case of a supplier and can subsequently increase the competition potential of a company. As for the competition mechanism, such changes produce significant modifications within a market economy. The Internet renders the possibility of creating business contacts in a rapid and geographically independent manner, as well as possibilities of obtaining data and realizing transactions within the world's economy. Public acquisitions by means of dynamic systems and electronic bids are currently one of the significant areas of electronic commerce.*

Key words: information technology; costs; e-commerce; electronic markets; added value.

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Introduction

Electronic commerce is generally considered as very important for the competitiveness and future development of national economies within the informational society. A reason for this development is the rapid change in the technology of processing data and information. The technical progress in the area of information technology and communication is used as a technology in almost every economic field and at almost every work place. Besides the reduction of the transactional costs and the gradual disappearance of barriers to entry the markets, the development potential increases. In this context, the liberalization of international communications is an important stimulant.

The notion of “market” is generally used to designate the meeting between demand and offer, whereas the notion of “market place” is a concrete space for the meeting of the participants in that market, place that represents its infrastructure (for instance a proper market, a market hall, a transport infrastructure etc.). The actors’ participation in the commerce on classical markets is often restricted by certain conditions such as place and time for the market’s organization, which play a decisive role. Commerce on

these markets follows strict rules that are usually partly dependent on the structure offered by that place.

An electronic market is a market form developed from the classical market where, instead of analogical means like language and catalogues, the information and communication means (ICM), especially computer networks, are used, in order to go beyond distance. Like the classical market, the electronic market is an economic institution useful for the trade of goods and services.

In comparison with the classical market, the transactions are not carried out in a fix and pre-established space (weekly market, shop, etc.), but in an electronic environment. Closing transactions means using interconnected ICM services. Electronic markets are based on the combination of several technologies: database systems for storing, selecting and accessing data; communication networks for the automatic data exchange among terminal systems that process data from suppliers and clients; and multimedia technology for interconnecting the information and the interactions of the participants in the market. In carrying out a transaction on these markets,

the same steps as on the classical market can be made, in principle, depending on the traded goods and services.

International Electronic Commerce

At the end of 2006 there were already more than one billion Internet users (www.ibm.com). Internet offers the possibility to rapidly bind business relationships irrespective of geographical distances, the possibility to obtain information and carry out transactions within the world economy, starting from the simplest communication with the international target groups and finishing with selling to international consumers. Moreover, the availability of goods on the entire globe and the short action time do not depend on distances and the costs are relatively low.

International electronic commerce means initiating, negotiating and/or closing transactions between subjects of the world economy. Enterprises, public and private entities are permanently orienting their Internet-supported electronic commerce activities towards initiating, negotiating and/or closing processes of goods exchange. A characteristic feature of the Internet is the virtual character. Internet means global environment, built on the entire surface of the Earth, outrunning the geographical limits.

But technically penetrating the Internet is not the decisive condition for internationalizing e-commerce. An entity that is considering entering the Internet ought to have gained a certain international experience in the field, a certain international know-how and an infrastructure that is appropriate for the international environment. The occasional presence on the Internet of a company does not necessarily mean that international buyers will purchase from that company.

On the other hand, when defining international electronic commerce it appears necessary to take into consideration the specific conditions of each country and the characteristic features of the target groups. We therefore speak about international electronic commerce when it addresses consumers from the markets of other countries with which transactions can really be carried out. The e-commerce form can be a differentiated one, depending on the markets of those countries, or a standardized one for several of them. One can also resort to mixed forms, meaning that, for some markets, standard forms are used, while for others – differentiated forms.

The public acquisitions contract in the light of new regulations

Considering the necessity of taking urgent measures for developing and promoting a new legislation in the area of public acquisitions, in the context of the pledges made by Romania in Chapter 1 “Free Circulation of Goods” and on the background of the European Committee’s Recommendations, the Romanian Government adopted the Emergency Ordinance no.34, published in the Official Gazette no. 418 from 15.05.2006.

The ordinance regulates the procedures of awarding the public acquisition contract and the contract for the concession/lease of public works and services, as well as the ways of solving the appeals formulated against the acts issued in connection with these procedures. The aim of this Government Emergency Ordinance consists in:

- a) promoting competition among economic operators;
- b) guaranteeing equal and non-discriminatory treatment of economic operators;
- c) ensuring the transparency and integrity of the public acquisition process;
- d) ensuring efficient utilisation of public funds, objective that can be achieved if the contracting authorities put into practice the award procedures.

The awarding of public acquisition contracts is based on the following principles:

- a) non-discrimination;
- b) equal treatment;
- c) mutual recognition;
- d) transparency;
- e) proportionality;
- f) efficiency in using public funds;
- g) assuming responsibility.

Types of public acquisition contracts

a) *The contract of works* is the public acquisition contract that has as object:

- the execution of works or the execution of buildings;
- projecting and executing works or projecting and executing a construction;
- realizing by any means a construction that meets the requirements specified by the contracting authority;

b) *The contract of supply* is the public acquisition contract, other than the contract of works, whose object is the supply of one or several products by means of purchase, inclusively purchase by installments, rental or leasing with or without purchase option.

The public acquisition contract whose main object is the supply of products and whose accessory object consists in operations/works of installing and putting into service is considered to be a supply contract.

c) *The contract of services* is the public acquisition contract (other than the contract of works or of supply) that focuses on the providing of one or several services.

The public acquisition contract that has as main object providing services and as accessory object, carrying out other activities is considered to be a contract of services.

d) *The public acquisition contract* whose object is both supplying products and providing services is considered to be a:

- *contract of supply*, if the estimated value of the products is higher than the estimated value of the services stipulated in that contract;
- *contract of services*, if the estimated value of the services is higher than the estimated value of the products stipulated in that contract.

Contracting authorities

The following are considered contracting authorities:

- a) Any state body – public authority or public institution – who acts at central level or at regional or local level;
- b) any public body, other than the ones stipulated in a), that has juridical personality, was founded in order to satisfy needs of general interest, has non-commercial and non-industrial character, and has at least one of the following features:
 - It is financed mainly by a contracting authority as defined in a) or by another public body;
 - It is subordinated or under the control of a contracting authority as defined in a) or of another public body;
 - More than half of the members of the board/of the management or supervising body are appointed by a contracting authority as defined in a) or by another public body.
- c) Any partnership consisting in one or several contracting authorities from the ones stipulated in a) or b).

Electronic bid

The contracting authority has the right to use the electronic bid for public acquisitions under the following circumstances:

- a) As final stage of an open tender, of a restricted tender, of a negotiation with the prior publication of a participation announcement, or of a request for offers, before awarding the public acquisition contract, and only if the technical instructions were accurately defined in the task book;
- b) When the competition among economic operators that signed a frame-agreement is resumed;
- c) On the occasion of submitting firm offers for awarding a public acquisition contract by using a dynamic acquisition system.

The contracting authority must announce the decision of using the electronic bid in the participation announcement and in the awarding documentation. The contracting authority has no right to abusively or improperly use the electronic bid in order to:

- a) hinder, restrict or distort competition;
- b) modify the object of the public acquisition contract as established in the participation announcement and in the awarding documentation.

Awarding services and works contracts that include intellectual performance such as consulting, projecting and similar activities cannot represent the object of an electronic bid.

When intending to use the electronic bid, the contracting authority must also include within information and instructions the following typical specifications:

- a) the offer's elements that will represent the object of the recurrent offering process, under the condition that those elements were quantifiable and could be expressed in figures or percents;
- b) value limitations (if it is the case);

c) information that will be put at the bidders' disposal during the electronic bid and the moment when the information will become available;

d) relevant information concerning the electronic bid process;

e) the conditions in which the bidders will have the right to auction, mentioning first of all the minimal differences that will be requested, if it is the case, for bidding the new offers;

f) relevant information about the electronic equipment used, about the technical conditions and the specific ways of connecting.

Before launching an electronic bid, the contracting authority has the obligation to carry out a full initial evaluation of the offers, in accordance with the awarding criterion established in the awarding documentation. The contracting authority has the obligation to invite all bidders who submitted appropriate offers to present new prices and/if new values of the offer's elements. The invitation is transmitted by electronic means, simultaneously, to all those bidders. The invitation must specify the date and the start moment of the electronic bid, as well as any piece of information necessary for individual connection to the electronic equipment employed.

The contracting authority does not have the right to start the electronic auction sooner than two working days after the date when the invitations were sent.

If the contract is granted based on the criterion "the most advantageous offer from an economic point of view", the invitation must also contain information regarding:

a) the result of the first evaluation of the offer submitted by the addressee-bidder;

b) the mathematical formula to be used for automatically establishing the final classification, depending on the new prices and/or the new values submitted by the bidders. The mathematical formula used contains the weights of the evaluation factors that are to be applied in establishing the offer that is most advantageous from an economic point of view, in accordance with the specifications from the participation announcement or from the awarding documentation.

In an electronic bid, the repetitive offering process refers to:

a) only to prices, if the awarding criterion is the lowest price;

b) or only to prices and/or other elements of the offer, as stipulated in the awarding documentation, if the awarding criterion is the offer that is most advantageous from an economic point of view.

The electronic bid takes place in several successive rounds. During each round of the electronic bid, the contracting authority has the obligation to communicate to all bidders, in an instant, at least the pieces of information they need in order to find out at any point their position in the classification. The contracting authority has the obligation/right to communicate other pieces of information, too, concerning:

a) the number of participants in that precise round of the electronic bid;

b) new prices or new values presented by other bidders in the bid round, only if the awarding documentation stipulated this possibility.

During the bidding rounds, the contracting authority has no right to disclose the identity of the bidders.

The electronic bid ends in one or in a mixture of the following ways:

a) at a specific moment, established beforehand and communicated to the bidders in the participation invitation;

b) after a number of bidding rounds whose calendar was beforehand and exactly established and communicated to the bidders in the participation invitation;

c) when no more new prices and/or values (that meet the requirements concerning the imposed minimal differences) are accepted; in this case, the contracting authority must specify in the participation invitation a deadline it will let elapse from the moment the last offer is received till the finalization of the electronic bid.

The contracting authority has the obligation to award the public acquisition contract in accordance with the law, on the basis of the result obtained when ending the electronic bid.

The public acquisition file

The contracting authority has the obligation to draw out the file of the public acquisition for every contract awarded or frame-agreement concluded, as well as for each initiation of a dynamic acquisition system.

The public acquisition file is stored by the contracting authority as long as the public acquisition contract/the frame-agreement produces legal effects, but not for less than 5 years after the date when that contract was finalized.

The public acquisition file must contain at least the following elements:

a) the note about establishing the estimated value;

b) the announcement of intent and the proof it was transmitted for publishing;

c) the announcement of participation and the proof it was transmitted for publishing and/or the participation invitation;

d) the awarding documentation;

e) the note about choosing the awarding procedure, if the applied procedure differed from an open tender or a restricted tender;

f) the note about accelerating the awarding procedure, if it is the case;

g) the report of the awarding procedure;

h) the signed public acquisition contract/frame-agreement;

i) the awarding announcement and the proof of transmitting it in order to be published.

The stipulated report of the awarding procedure is drawn up before concluding the public acquisition contract/the frame-agreement/the dynamic acquisition system and contains at least the following elements:

a) name and address of the contracting authority;

b) the object of the public acquisition contract/the frame-agreement/the dynamic acquisition system;

c) if it is the case, the name of the candidates participating in the procedure;

d) if it is the case, the name of the selected and not selected candidates, as well as the reasons for selecting or not selecting those candidates;

e) the name of the bidders participating in the procedure;

f) the name of the bidders rejected and the reasons for this decision;

g) if it is the case, the specific reasons for which one or more offers were rejected because of considering the presented prices as unusually low;

h) the name of the bidder(s) whose offer was declared to have won and the reasons for this decision;

i) in case of the winning bidder(s), the part of the contract this/these ones declared to subcontract it, along with the name of the subcontractors;

j) if it is the case, the reasons for deciding to cancel the awarding procedure.

The public acquisition file has the status of public document. Persons' access to these items of information takes place by respecting the terms and procedures stipulated by law with respect to the free access to public interest information and cannot be restricted unless the information is classified or legally protected by a right on intellectual property.

If the contracting authority puts into practice an awarding procedure through electronic means, uses a dynamic acquisition system or a system of electronic acquisitions, it has the obligation to ensure full traceability of the actions it carries out during the awarding process, so that the drawing out of the public acquisition file remains unaltered.

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