E-Procurement in Practice: & Bird & Bird

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Issues

● The Commission's vision – "end-to-end" e-procurement
● What is e-procurement?
● E-procurement in practice:
  • Centralised approaches
    - Portugal, Estonia, Korea
  • "Local" approaches
    - Finland, England
The Commission's vision – "end-to-end" e-Procurement
End-to-end E-procurement

- *Digital Agenda for Europe (2012)* – e-government is a crucial element of a modern and competitive Europe
- *Communication on End–to-End Procurement* (July 2013) – vision for the digitisation of the public procurement process from electronic publication of notices through to electronic payment
  - fundamental re-think of organisation of public procurement
  - will improve overall efficiency
  - assist in the wider digitisation of government services
- Current use of e-procurement is low across EU:
  - e-tender submissions: only 10% across EU (2011)
  - 13% increase on 2010
  - only mandatory in Portugal (for tenders above a certain value)
End-to-end E-procurement – the overall agenda

● Change from the "on a par" principle in the 2004 Directives to making aspects of e-procurement process mandatory

● New Public Sector and Utilities Directives make aspects of the e-procurement agenda mandatory
  • Cf Non-mandatory approach for communications in Concessions rules

● E-invoicing Directive requires CAs to accept e-invoices which comply with the relevant standards (once standard has been developed)

● Extended 54 month timescales for implementation of e-communications, including e-submission provisions
  • UK – October 2018, except CPDs – April 2017
What is e-procurement?
Scope of e-procurement under the 2014 Directives

- E-procurement
  - e-communications
    - including e-submission requirements
  - e-access to procurement documents
  - e-catalogues
  - e-auctions
  - dynamic purchasing systems
  - e-Certis

E-communications – "Fully Electronic Communications"

- Communications must be made by electronic means at all stages of the procurement procedure, including:
  - notices in electronic form;
  - electronic access to procurement documents;
  - transmission of requests for participation;
  - transmission of the tenders (e-submission) (after an extended transition period of 30 months (UK: until 18/10/18))

- The mandatory use of e-communications will not extend to:
  - electronic processing of tenders, or electronic evaluation or automatic processing.
  - any communications after the award of the contract; or
  - internal communication within the contracting authority.
"Fully Electronic Communications" (Art 22)

- The tools and devices for e-communications, as well as their technical characteristics:
  - must be non-discriminatory, generally available and interoperable with ICT products in general use
  - shall not restrict economic operators’ access to the procurement procedure

- Tools and devices which are not generally available may be required as long as CAs offer alternative means of access

- Oral communications are allowable except for the essential elements of a procurement procedures
  - oral comms but must be documented (E.g. by written or audio records or summaries)
Electronic access (Art 53)

- CAs must provide, by means of the internet, unrestricted and full direct access free of charge to the procurement documents from the date of the Contract Notice or Invitation to Confirm Interest
  - the internet address at which the documentation is accessible must be specified
  - What must be made available when the Contract Notice is issued?
    - CCS Guidance - pragmatic approach

- If full direct access cannot be offered, CAs must specify this in the Contract Notice or the Invitation to Confirm Interest,

- CAs must shall provide all bidders additional information relating to the specifications and any supporting documents not later than six days before the date for the receipt of tenders
E-Catalogues (Art 36)

What are they?
• Electronic formats for the presentation and organisation of information in a manner that is common to all bidders

What's the issue?
• Differing technical formats or processes and messaging standards creates obstacles to interoperability, within each Member State and especially between Member States
• Bidders could be required to customise their own catalogues in a different format for each procurement

What's the solution?
• Standardising catalogue formats in order to improve the level of interoperability, enhance efficiency and reduce the effort required by bidders
E-Auctions (Reg 35)

- Already provided for in 2004/EU/17 and 18 + 2006 Regulations
- Few changes to the existing rules in the new Public Sector and Utilities Directives
- Changes of detail:
  - Update of basis of award to be consistent with the new award criteria rules
  - Clarification of what constitutes an admissible tender
Dynamic Purchasing Systems (Art 34)

- DPS may be used for "commonly used purchases the characteristics of which, as generally available on the market, meet the requirements of the contracting authorities"
- All DPS communications must be electronic. (2004 Directive - unrestricted and direct electronic access to the specification etc from the date of contract notice)
- Commission has simplified the DPS rules to promote take-up
- DPS arrangements will now be a form of the restricted procedure, with a selection procedure that will operate both at the set-up of the DPS but also allows for new suppliers to join the DPS during the lifetime of the DPS
- 2004 Directive requirement for indicative tenders in each award process has been removed
E-Certis (only PS) (Art 61)

What is it?

● EU Commission provided and managed electronic system to facilitate the exchange of certificates and other documentary evidence required by CAs
  • currently updated and verified on a voluntary basis by national authorities

The Problem?

● Commission considers that voluntary updating and verification of e-Certis does not deliver its full potential for simplifying and facilitating documentary exchanges
  • particularly for SMEs

The Solution?

● Maintenance of e-Certis will be made obligatory
● Recourse to e-Certis will become mandatory "later"
E-invoicing

• E-invoicing is "an important step towards paperless public administration in Europe"

• Potential significant economic as well as environmental benefits
  • adoption of e-invoicing in public procurement across the EU could generate savings of up to €2.3 billion

• Directive 2014/55/EU will establish a European e-invoicing standard:
  • Should improve interoperability between different, mainly national, e-invoicing systems
  • aims to eliminate legal uncertainty, excessive complexity, and additional operating costs for bidders
Content of E-Invoicing Directive

- Commission has requested a European standard for the semantic data model of the core electronic invoice.
- The semantic data model of the core electronic invoice must be technologically neutral, and must guarantee personal data protection.
- Once the European standard has been drawn up, the Commission shall publish the reference to such European standard in the OJEU.
- Member States shall ensure that contracting authorities and contracting entities do not refuse to receive electronic invoices which comply with the European standard whose reference has been published in the OJEU.
Approaches to implementation of E-procurement
Korea – Centralised Approach

- 2002 – Korea On-Line E-Procurement System (KONEPS)
- Two-thirds of Korean procurement conducted through KONEPS
- Covers – the entire procurement process form tender notice, awarding (including contract execution) and payment
- Central government agencies must use KONEPS for procurements above a threshold value
  - In practice KONEPS is actively used for below threshold procurements as well
- Other customer agencies must "make efforts" to use KONEPS but it is not mandatory
- Bidders register on KONEPS
- Centrally funded?
Estonia – Centralised Approach

• 2009 – e-procurement development project
  • €500k EU funding
• e-procurement tool launched – 2011
  • centralised and free of charge to users
  • a development of existing procurement portal
• 2013 – e-procurement (including e-submission) mandatory for no less than 50% of each CAs planned procurement
• 2015 – 80% of procurements have used the e-procurement tool
• Mainly in Estonian – some features in English
  • Foreign users have a user name/password log-in instead of Estonian ID-card
Portugal – Multiple Certified Solutions

• Mandatory e-procurement since October 2009
• Included e-notification, e-access, e-submissions
• 7 electronic platforms certified by a central government body
  • Each CA must choose a certified solution
  • Each bidder must have access to all solutions
• Issues
  • Initially high costs of services to CAs – now decreasing
  • Platform operators charging bidders for "secondary services"
    • E.g. temporal stamps
  • Need for qualified digital signatures
    • Has led to exclusion of bids
Finland – Decentralised Approach

• Central single provider framework
  • KL-Cloudia solution
• CAs decide whether to use framework or to procure on an "authority by authority" basis
• 80 municipalities (Spring 2015) have joined framework
  • Nb. Some are CPBs
  • Approx 3,300 procurements
  • Approx 50% by value of procurements (2014)
England – Decentralised Approach

• No central system
  • CAs decide on implementation on an "authority by authority" basis
  • CCS Guidance – as e-procurement marketplace is already well established a new centralised system is not needed
• Various e-procurement frameworks:
  • No CCS central e-procurement frameworks
  • Local/ Sector e-procurement frameworks:
    • ESPO E-Procurement Framework (Ref 774)
    • NOE CPC eSourcing Framework
    • CCS G-Cloud Framework – Lot 3 (Software as a Service)
• No e-procurement frameworks in CCS "pipeline"
  • NB see "digital outcomes, specialists and supporting services"
Concluding thoughts

- National approaches to e-procurement systems are inconsistent with market objectives
  - National differences hinder bidder access to national marketplaces
- Little analysis of benefits of single vs multiple solutions
  - Portuguese experience is mixed: multiple solutions have caused interoperability issues but competition has brought down the costs
- Decision on central vs de-centralised solution may depend on size of country
  - One –size fits all is unlikely to work in larger countries
- Guidance-only approach may leave CAs exposed.
Thank you & Bird & Bird

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