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INFORMATION TECHNOLOGY AND PUBLIC PROCUREMENT

Contribution from the European Community

The following communication from the Permanent Delegation of the European Commission, dated 30 July 1997, has been received with the request that it be distributed to the members of the Committee.

1. Introduction

This document presents the EC views on some aspects of information technology linked to public procurement in order to contribute to the Committee's debate on this issue. It builds on the papers previously tabled by the Community and other delegations, as well as the Secretariat and seeks to stimulate debate on certain issues which to date have been less fully addressed.

In particular, the paper will focus on two aspects. It is true that the use of information technology advances can help to improve the present procurement system and that the present rules do not take sufficient account of those advances. However, the debate does not necessarily end at that point. A wider use of electronic tools could put into question the traditional approach of government purchasing, and reflection on this issue is also needed. Finally, one cannot forget that non-discrimination is a fundamental principle of the GPA, and its respect should be ensured.

2. Use of electronic tools to improve the current government procurement system

Today's information technology advances could provide the tools to create significant improvements in providing relevant information about procurement opportunities to potential suppliers.

Advertising opportunities and the transmission of documents between bidders and purchasers are generally considered as the main areas in which information technology can play a role. However, it is also widely recognized that the various legal frameworks are not yet adapted to the use of information technology. As regards the GPA, this has been already highlighted by the Secretariat's paper of 22 August 1996 and the Canadian non-paper recently distributed. It should also be noted that the full benefit of this technology could only be achieved if agreement on harmonized standards for coded information can be reached. This would facilitate the use of search devices to browse through the information contained in the different databases. Furthermore, the EC would like to suggest the use of a harmonized multilingual procurement vocabulary system to describe the purchases, as has been done at EC level with the CPV. Security of data transmission also needs to be ensured.

Two of the categories defined in the Secretariat's paper are of particular interest. They relate to the wider use of selective tendering and the implications of information technology for the deadlines

laid down in the Agreement. As regards the use of selective tendering, information technology could put into question the present scheme. This issue will be dealt with in the following section.

It has been stated that deadlines could be shortened to take account of the increasing use of information technology. As it is recognized by Article XI of the GPA, any prescribed time-limit shall be adequate to allow suppliers to prepare and submit tenders. Information technology advances certainly help to shorten the time for submission, publication and dissemination of tenders. However, the time needed to prepare tenders is likely to remain the same in most cases. As long as submission by normal mail and electronic tools coexists, it could be discussed if entities using electronic transmission should be offered the advantage of shorter deadlines.

3. New schemes of government purchasing as a result of wide use of electronic tools

Information technology could also revolutionize the whole way of doing business between purchasing entities and suppliers. This path opens the way to full electronic tendering or electronic commerce systems. It is not only in the context of relations between purchasers and suppliers that changes are to be expected. In addition, new electronic tools provide opportunities for purchasing bodies to cooperate via the exchange of information, ideas and experiences. This option would require further consideration on security aspects, interoperability of systems, as well as on legal questions such as the acceptance of digital signatures.

The extent to which classic rules of public procurement are able to face these new challenges needs discussion. Some examples are provided below which show that the traditional behaviour of contracting entities inviting suppliers to tender could be put into question by new technological opportunities. These examples could serve as the basis for debate in the Committee.

The traditional view of public procurement is a procedure in which the purchasing entity advertises a particular contract and waits for bids to be submitted, in other words, the potential supplier searches for a purchaser. However, information technology could also facilitate the reverse approach, whereby the purchasing entity searches actively for suitable suppliers in order to increase competition. This is particularly linked to qualification systems. In the traditional approach, qualification systems are demand-driven, at the request of contracting entities or public authorities. However, the use of information technology for qualification could facilitate the development of different approaches. On the one hand, lists of selected suppliers could be made accessible to other contracting entities, leading to the establishment of effective and efficient harmonized systems. On the other hand, one should also not exclude the possibility that suppliers themselves may wish to create a sort of private qualification system providing a quality label and competing among themselves. Therefore, information technology allows contracting entities to increase competition among qualified suppliers or among different systems of qualification. In that sense, a key issue for debate should be the mutual-recognition principle if discrimination is to be avoided.

Not only could information technology help contracting entities to identify suitable suppliers, it could also facilitate contracting entities' direct purchases. Similarly to normal markets, virtual procurement markets could be imagined. In such a framework, entities would actually directly purchase in an electronic market where the system would identify, based on supplier information available on the World Wide Web, the best offer. Information technology could help to identify opportunities and where to find the best value for money. This kind of virtual market could be quite efficient for purchases of off-the-shelf products, where price is the major criterion for the award of the contract and the contract value is low.

4. Ensuring non-discrimination

A key issue for the Committee's debate on the use of information technology systems in public procurement remains how to ensure the transition to a streamlined, less cumbersome and more focused procurement process in such a way that all players, whether purchasers or suppliers, will benefit from the use of new electronic tools in government procurement. In particular, the use of information technology should promote the aims of open, non-discriminatory and efficient government procurement.

As it is stated in the GPA Secretariat's paper of 10 May 1996 (GPA/W/15), the increased flow of information, if not properly handled, could put foreign suppliers at a disadvantage, even where formally applied on a non-discriminatory basis.

At present, non-discrimination should address at least the questions of the ease of access to information sources (including establishing links between databases and ensuring interoperability) and the ease of use of information tools (including search devices, common nomenclatures ...).

There is another element which has to be taken into account in the use of advanced information technology tools. Indeed, one should avoid that it creates or widens the gap between entities and suppliers in particular SMEs, which can effectively operate in the information age, and those which cannot, thus creating a competitive advantage in favour of the former group. This gap also appears at international level given that not all countries are at the same level of social and technological development with respect to the information society. Therefore, consideration would have to be given as to how to take account of the differing levels to which GPA members make use of information technology, as well as the potential needs of newly acceding members in the future.

5. Conclusions

The European Community is convinced that a political discussion on the role information technology should play in the review process of the Agreement is necessary before the Committee considers specific changes to existing articles of the Agreement. This debate will have to focus on ensuring non-discrimination.

The choices made at this stage will determine the extent to which the aim of simplifying the Agreement in order to make it more attractive to signatory candidates will be attained.

This paper mentions the major technical and legal questions arising with the use of information technology in government procurement. The European Community requests that the Committee deal with these points in its discussions on these issues. The EC will at that stage table concrete solutions for these questions.