

PUBLIC
LAW

MANDATORY
USE OF
ELECTRONIC
PLATFORMS
AFTER
30.07.2009

PUBLIC PROCUREMENT AND ELECTRONIC PLATFORMS

The Public Contracts Code (PCC), which entered into force last year, established a one-year period to phase out the use of paper submissions in official procedures relating to the awarding of contracts in public tenders. As a general rule, it is no longer possible to use paper in the submission of bids or candidatures. The public session (“acto público”), where such paper documents were formerly verified, is likewise now defunct. The whole process shall now be carried out in an electronic form.

Currently it is a mere option, but **after 30.07.2009, the use of electronic platforms shall become mandatory** for awarding entities and bidders in public contract tenders.

In summary:

- Electronic platforms are **electronic infrastructures** where procedures relating to contracts subject to the PCC may be executed;
- The entities that manage electronic platforms **have to be certified by the supervising entity CEGER** (*Centro de Gestão da Rede Informática do Governo*) and the conformity of each electronic platform with legal requirements is also verified;
- In observance of the procedures set forth in the PCC, each awarding entity may choose the electronic platform that it will use in conferring contracts, from among the existing ones in the market;
- **Access to the electronic platforms is, as legally enshrined, free of charge for interested parties**, candidates and bidders (open access principle);
- All users must possess **digital certificates** - these may either be already owned or be digital certificates issued by the electronic platforms - to access the platforms (identification of users);
- Apart from the digital certificate for identification purposes, when the user intends to upload a document to the platform (for instance, submission of a bid), he will also need a **digital certificate of a qualified electronic signature**, issued by a certified entity with credentials for such purpose;

All users must possess digital certificates.

- It should moreover be noted that, whenever the PCC determines that an act should take place within a specific period of time (for instance, submission of a bid), the document to upload in the electronic platform must carry a **date stamp**, issued by a certifying entity that renders services of chronological validation.

We would highlight that the attainment of date stamps and digital certificates, in particular of the digital certificate of qualified electronic signature, may take several days. It is therefore advisable to prepare submissions as soon as possible.

Difficulties are foreseen in the use of platforms.

Furthermore, **the use of electronic platforms has given rise to several issues**, including confusion on behalf of users regarding the digital certificates that are needed and which certifying entities may issue such certificates, as well as issues regarding the structure of the system that, for instance, allows the submission of bids without the necessary certificates, which will, naturally, give rise to serious problems at a later date.

It is advisable, therefore, for users of electronic platforms to be thoroughly prepared in advance.

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