

NEW REGIME FOR PROCUREMENT ELECTRONIC PLATFORMS

PUBLIC LAW

Law no. 96/2015, published August 17, regulates the provision and use of electronic platforms and transposes into national law some rules regarding electronic procurement set forth in the EU procurement directives.

IMPIC, IP is now the entity responsible for the licensing, monitoring and supervision of electronic platforms. GNS (Nacional Security Cabinet) is the accreditation entity for electronic platforms and respective security auditors.

As before, awarding entities must acquire electronic platform services in accordance with the procedures set forth in the Public Contracts Code. On the other hand, economic operators are free to choose among the licensed electronic platforms the one they intend to use.

In what concerns the types of services rendered by electronic platforms to economic operators, the diploma distinguishes between *base services* and *advanced services*.

Base services include the access to all essential functionalities that allow the total and complete development of pre-contractual public procedures, namely, the access to published tender documents, the presentation of clarification requests or the submission of applications or bids. *Advanced services* are services not required for the total and complete development of pre-contractual public procedures, and being facultative, may be rendered to economic operators through a contract subject to consideration.

Regarding remuneration for the services rendered by electronic platforms, **platform managing companies must provide any economic operator, gratuitously, a minimum of three accesses, simultaneously, to the *base services* of the electronic platform** (the registry process of economic operators in the gratuitous modality cannot exceed three working days). Platform managing companies may only charge economic operators for the provision of more than three accesses to *base services* or for the rendering of *advance services*.

New rules on the remuneration of services rendered to economic operators

In what concerns awarding entities, platform managing companies are remunerated for the service of the provision of an electronic platform, for the support to the respective use and other advanced services, pursuant to the contract between the parties.

It should be highlighted that platform managing companies are now subject to more demanding obligations toward their users, such as: the obligation to provide a telephone line (assistance must be provided between 9 a.m. and 7 p.m. on working days, with an established level of service), the obligation to intervene and render assistance, when needed or requested, for the clarification of any queries, as well as the obligation to issue abnormality reports and access data whenever required by the jury of a procedure.

Electronic platforms should always be available, except in cases of malfunction or maintenance. Maintenance operations may only be performed on working days between 12 p.m. and 8 a.m., or on Saturdays, Sundays and national holidays at any time, so that any constraints to the users are mitigated (maintenance operations, except when justified urgent operations are at hand, must be announced to all users, on the entry page of the electronic platform, 72 hours in advance).

Regarding functionalities, please note that now **electronic platforms have to guarantee the sending of e-mails to all intervenient parties, whenever such communications are mandatory pursuant to the Public Contracts Code.**

In terms of technical requirements, electronic platforms must ensure, whenever possible, through the Public Administration interoperability platform, their connection with, *inter alia*, the Public Contracts Portal (BASE) and the portal of the electronic official gazette (*Diário da República*).

One should also call attention to the rules of interconnection and interoperability between electronic platforms: economic operators may freely choose their electronic platform, regardless of the one used by the awarding entity with whom interaction is envisaged (the conditions for the interconnection, interoperability and finance shall be established by an ordinance to be published in 90 days after the publication of the Law). This means that, **in the future, an economic operator may submit its bid in an electronic platform different from the one used by the awarding entity for the carrying-out of the pre-contractual procedure.**

*Interoperability between
electronic platforms*

Finally, one should note that platform managing entities are now subject to a more severe misdemeanours regime.

This Law revokes Decree-Law no. 143-A/2008, July 25 and Ordinance no. 701-G/2008, July 29 and will enter into force on **October 16, 2015**.

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