

RULES OF LAW IN ELECTRONIC TENDERING

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ABSTRACT

Electronic tendering is actually is the advent of Information Communication Technology (ICT) in construction industry, whereby it has brought a broad exploration to the use of web-based technology in tendering processes. Electronic tendering, in its simplest form, is described as the electronic publishing, communicating, accessing, receiving and submitting of all tender related information and documentation via the internet, replacing the traditional paper-based tender processes, and achieving a more efficient and effective business process for all parties involved. A review of legal resources, including judicial decisions, statutory requirements and journal articles, revealed that there are not so many area of electronic tendering. Most legal material concentrates on the principles of tendering in a paper-based system. Whilst, it is already noted that the principle rules of offer is well established in the “paper based” tendering system, hence, it is not being a question of law when the dispute arise between the parties pursuant to the issues of “*Offer*” in the construction industry. The electronic tendering system however, has not yet tested the rules. Despite the fact, the objective of this research is to examine the validity principles rules of offer in electronic tendering system. This will be considered against the background of accepted practices and law related to the tendering process and relevant electronic transactions legislation, with a view to examining how the law might address the different, and sometimes heightened, risks involved in undertaking the process wholly in an electronic medium, rather than through the traditional paper document method.

ABSTRAK

Elektronik Tender merupakan satu perubahan yang dibawa oleh bidang Teknologi Informasi dan Komunikasi (ICT) didalam industri pembinaan. Ianya membawa satu era baru, dengan mengadaptasi penggunaan teknologi berasaskan web di dalam proses menender. Elektronik Tender, dalam bahasa mudahnya, menerangkan tentang proses penawaran tender, komunikasi, memuat turun data, menerima dan menghantar segala bentuk maklumat (atau dokumen) melalui internet. Elektronik Tender bertujuan menggantikan amalan tender tradisional kerana sistem baharu ini menjanjikan proses kerja yang lebih cekap dan berkesan pada semua pihak. Kajian perundangan, seperti keputusan mahkamah, kehendak statutori dan artikel-artikel jurnal mendedahkan terdapat hanya sedikit sahaja sumber yang berkaitan mengenai elektronik tender. Kebanyakan bahan rujukan adalah bersumberkan maklumat tender secara tradisional. Realitinya, prinsip penawaran tender secara traditional tidak dapat lagi dipertikaikan perundangannya. Namun begitu, pelaksanaan penawaran tender secara elektronik dipertikaikan kerana masih lagi belum dipratikkan di dalam sistem perundangan. Berdasarkan fakta tersebut, kajian ini dilaksanakan untuk mengkaji kesahihan prinsip penawaran secara elektronik dari segi undang-undang. Analisa kajian adalah berdasarkan latarbelakang prinsip perundangan yang digunakan dan Akta Elektronik yang berkaitan. Ini adalah untuk mengenalpasti bagaimana aplikasi penawaran elektronik dapat diadaptasi secara sah. Selain daripada itu, ia juga harus mempertimbangkan risiko yang bakal dihadapi ketika mengaplikasi sistem elektronik tender.