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**Item 3**

**EU procurement policy - Update**

**Summary**

This report updates members on:

1. work the LG Group is already undertaking to influence the EU review of the public procurement rules expected Autumn 2011
2. a specific EU issue relating to sharing services between local authorities
3. links between EU work and the wider LG Group 'Productivity Programme'

**Recommendations**

Members are asked to note the report, provide comment on any procurement difficulties, and approve the lobby strategy outlined in point 16.

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## **EU procurement policy - Update**

### **Background**

1. EU procurement rules directly govern how councils can buy their supplies and services. All procurements above a certain value (normally £156,442) must follow a relatively complex and lengthy EU procedure to ensure providers from across the EU get a chance to compete for councils' contracts.
2. EIU's work on simplifying procurement rules supports important parts of the LG Group's 'productivity programme' which encourages local government efficiencies in the face of budget cuts.
3. The Improvement Board steers elements of this work and will continue to receive updates in addition to updates given to the European and International Board.

### **Review of EU procurement rules**

4. The EU will announce a major review of the procurement rules in the Autumn 2011. Key issues to be considered include:
  - 4.1 the limited impact the rules have on promoting cross-border trade – almost all procurements are still awarded to suppliers within the member state;
  - 4.2 the costs borne by suppliers and public bodies implementing the rules;
  - 4.3 improving SME participation in bidding for public contracts;
  - 4.4 socially responsible, green, and innovative public procurement practices;
  - 4.5 better use of e-procurement technologies to make savings;
  - 4.6 greater regulation of 'concession' contracts (a specific type of public contract).
5. A revised Directive is expected to be proposed which will need to be agreed by the EU's institutions. The process of agreeing new rules at EU level followed by implementation into UK law will take several years.
6. In December 2010, the LGA conducted a major survey of local authority procurement managers to provide initial feedback on difficulties with the rules. Findings include:
  - 6.1 Two thirds responding that the Directive had increased costs and administrative burdens

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- 6.2 Increased costs for councils and bidders when using a particular award procedure for major projects (competitive dialogue procedure)
  - 6.3 Increased amount of time spent foreseeing or dealing with legal challenge
  - 6.4 The need for clearer and more accessible guidance and support from government and the EU.
7. Members are asked to bring any other ideas or concerns regarding EU procurement rules which cause difficulties for councils in delivering services. Such ideas can then be reflected in the Group-wide position currently under development. The position paper will be cleared through the normal LGA political processes in the coming weeks.
8. Additionally, the LGA has:
- 8.1 held early negotiations with both Whitehall and the European Commission
  - 8.2 delivered a consultation workshop event (Brighton) attended by over 50 procurement managers
  - 8.3 produced a series of case studies outlining associated costs and burdens
  - 8.4 brought local authority procurement experts to Brussels to give evidence to a European Commission hearing
  - 8.5 chaired the responsible CEMR (European LGA) working group to ensure associations from across the EU are speaking with one voice in line with LG Group messages.

**Shared services issue**

9. A specific issue which has arisen is the uncertainty EU-wide around when arrangements to 'pool' services between public bodies requires an EU public procurement procedure. The rules become particularly important as councils look to manage budget cuts by increasingly pooling their back office or front line services with other councils.
10. Achieving efficiencies by outsourcing services via worker cooperatives or community ownership also forms an important part of the Coalition's 'Big Society' agenda. The risk is however that innovative models of public service delivery are being hampered by uncertainties around when EU procurement rules have to be followed or not.
11. The EU is discussing the issue with the LGA and may produce guidance, particularly in light of the 'Hamburg' judgement of 2009 (C-480/06) which gave a freer hand to public bodies in certain circumstances to award services to another public body without running a competition.
12. It is recommended that LGA should make the case during 2011 that whilst public procurement rules play a valuable role in ensuring competition, 'pooling'

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arrangements between public sector bodies are vital in the face of budget cuts. They constitute internal administrative reorganisations in the public interest, and should not be treated as market contracts with commercial aims.

**LG Group productivity programme**

13. The EU work on simplifying procurement rules and shared services is an important part of the Group's overall work on boosting local government efficiency and productivity. In particular the work supports the 'procurement' and 'shared services' work streams of the Group's 'productivity programme'.
14. The productivity programme supports councils to generate further improvements in productivity to get the very best value for money and outcomes for local communities. It also engages local government and partner organisations in a debate about longer-term service redesign.
15. As the LG Group becomes ever-more integrated it is expected that such EU work will form an important element of Group-wide programmes.

**Lobby strategy**

16. Members are asked to comment and agree that during 2011:
  - 16.1 EIU contributes to the LG Group 'productivity programme' by providing early input into Whitehall and the EU ahead of the review of the public procurement Directive.
  - 16.2 In the face of significant budget cuts, the Group continues to make the case to Whitehall and the European Commission that most shared services arrangements should not require an EU competition.
  - 16.3 EIU increases its work with experts from across the LG Group and the sector to build our evidence base to support lobbying on procurement and efficiency topics.
  - 16.4 Board members play an increasingly active role on these topics in negotiations with both Whitehall and the EU institutions.

**Financial implications**

17. Such activities are covered within the existing budget.