

Update on reform of EU procurement rules

Purpose

For discussion and direction.

Summary

This report updates the European and International Board on LGA's programme of work to secure simpler EU rules governing councils' procurements.

Attached at **Annex 1** is CEMR's (European LGA) first reaction to the European Commission's proposal for a new directive on public procurement.

Attached at **Annex 2** is the LGA's position paper in response to the European Commission's proposal for a new directive on public procurement.

Action

Members are requested to note the report, the annexed position papers, and to give comments as a steer to officers on the next stage of the lobbying programme in Brussels and London.

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Background

1. EU procurement rules directly govern how councils can buy their supplies and services. Public procurement represents 18% of Europe's economy and all procurements above a certain value (normally £173,934) 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. The LGA's work is lead by the Improvement Board and contributes to the LGA's 'productivity programme', which encourages local government efficiencies in the face of budget cuts.
3. The work also links with others areas of LGA activity including: localism, promoting local employment and economic growth; new models of service delivery and public private-partnerships; efficiency savings and collaborative procurement; simplifying the commissioning of social services; and environmental and energy efficiency issues in public contracts.

Update

4. In January 2011 European and International (E&I) Board Members endorsed an LGA lobby strategy to seek simpler and more flexible procurement procedures at EU level.
5. Work continues in line with this strategy, and since then the EU has published, in December 2011, its legislative proposals for a new directive governing council procurements. The directive will now be negotiated by the European Parliament and national governments and will come into force on 30 June 2014.
6. The 246 pages of proposals represent a mixed bag for councils. There are some welcome simplifications, and greater clarity in some areas such as the ability to buy socially responsible or green, energy-efficient products.
7. However the proposals also introduce several new burdens on councils which are unwelcome at this time. These include:
 - 7.1 new burdens when commissioning legal and leisure services
 - 7.2 new burdens when councils seek loan financing
 - 7.3 new advertising requirements for commissioning social services and a requirement to introduce new procedures nationally

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- 7.4 councils having to provide explanations as to why they have not split contracts up into smaller lots to help SMEs
 - 7.5 a restrictive interpretation of shared services which may mean councils have to follow the EU rules simply to pool services with neighbouring authorities
 - 7.6 no exemptions for staff 'mutuals' who will now fall under the rules
 - 7.7 complications around the 'community right to challenge' introduced by the Localism Act 2011
 - 7.8 a new monitoring body at national level to police the enforcement of the rules
 - 7.9 new reporting obligations: sending copies of all large contracts to the monitoring body.
8. All-in-all the LGA does not believe the proposals live up to the simplified regime promised by the EU at the start of the process.
9. In response, in the last four months, the LGA has:
- 9.1 established a national procurement advisory group comprising council procurement practitioners, and held a teleconference to seek views
 - 9.2 ran a very successful live online EU 'Hotseat' consultation event with councils
 - 9.3 held discussions with Whitehall and the key members of the European Parliament
 - 9.4 secured local government representation to give evidence to the European Parliament's 'hearing' on the 19 March 2012
 - 9.5 coordinated work with other associations across the EU to present a united voice, and has drawn up a common statement on the need for simplification (attached at **Annex 1** for information).
10. Following the above activities, the LGA Improvement Board, which is leading this work, has approved the LGA position paper which deals with the technical issues (attached at **Annex 2** for information). A draft was also sent to the E&I Chair.
11. Members are asked to give comments on the position or any other concerns regarding EU procurement rules which cause difficulties for councils in delivering services. Such ideas can then be reflected in the ongoing lobbying work towards government and the EU during 2012.
12. Members are asked to comment and agree that during 2012, the LGA continues its programme of engagement with councils, Whitehall and EU institutions to seek a simpler and more flexible procurement regime at EU level. Such activities are covered within the existing budget.