

National Procurement Policy Statement and Procurement Green Paper

Purpose

For discussion and direction.

Summary

There are two future legislative proposals relating to procurement that will affect councils. First, the [Transforming Government Procurement Green Paper](#), published in December for which the closing date for consultation is 10th March 2021. Second, a new National Procurement Policy Statement (NPPS) which Cabinet Office wish to legislate for from April 2021.

LGA officers have been engaging with our National Advisory Group for Local Government Procurement (NAG) on the wider consultation about the Green paper and we are formulating our response. We have also engaged with colleagues in the LGA's Brussels office on potential legislation as we recognise the role that Policy (and the Parliamentary team) need to play during the consultation periods.

Recommendations

- Board Members are invited to feed their reflections and views on the outline of our response
- Board members to note the update on the National Procurement Policy Statement.
- Board members are asked to identify which of the issues identified in the Green Paper that the LGA should seek to influence.

Action

Officers to take members' views into account in the response to the Green Paper consultation.

Contact officers:	Tina Holland	Susan Attard
Position:	Programme Manager, Productivity Team	Head of Programmes, Productivity Team
Phone no:	07766 252 856	07825 530528
Email:	tina.holland@local.gov.uk	Susan.attard@local.gov.uk

National Procurement Policy Statement (NPPS) Update

Background

1. Members may be aware that the Government are planning to bring forward proposed legislation that sets out national priorities of strategic importance and how contracting authorities can deliver these through their procurement processes.
2. The proposed implementation date for this new legislation is April 2021. The effect on councils for this legislation is:
 - 2.1 All councils will need to 'take into account' *Government priorities* in their procurement.
 - 2.2 Councils will need to *publish forward 'pipelines'* of work from April 2022, if they have a spend of over £200m (reducing to £100m from April 2023) for at least 18 months in advance preferably 3-5 years.
 - 2.3 From April 2021, councils with spend of over £200m, (reducing to £100m next year), will need to *undertake a benchmark of their capability* to do procurement.
3. LGA officers have regular dialogue with the responsible Cabinet Office officials who have now responded to our concerns about this policy in the following terms:
 - 3.1 Cabinet Office has said it will now prioritise contracting authorities' priorities within the legislation and is looking again at how it can ensure that there is written consultation about the national priorities in the event that they are amended and/or updated.
 - 3.2 The requirement to publish pipelines of future work will be limited to those *individual contracts* that will be valued at more than £2million. The publication of a contracts register of those contracts to include whether the services being procured will be required again at the end of the current contract period, and the addition of known future new requirements (for example, where a council plans on building a new Town Hall in three years' time) will suffice.
 - 3.3 The NPPS legislation will simply require councils to benchmark themselves against a relevant set of standards (for example, our national procurement strategy for councils), and there will be nothing in the initial legislation about an *oversight body* (see below). Cabinet Office proposed that it work together with the LGA to develop any future guidance in relation to benchmarking and what 'good practice' looks like across the public sector.

Transforming Public Procurement Green Paper Update

Background

4. As the UK is no longer subject to EU public procurement law, on 20 December, Government published its 'Transforming Public Procurement' Green Paper for consultation. The paper sets out Government's plans to overhaul the procurement regime, creating an entirely new regulatory framework that aims to deliver better outcomes with the least burden on suppliers and the public sector.

5. The closing date for consultation is 10th March 2021. LGA is currently preparing its response.
6. There is much in the Green Paper that LGA has been calling for and which we support in principle, for example:
 - 6.1 A simplified contracting regime.
 - 6.2 The use of an 'open contracting data standard' especially if this means that we can remove the burden of reporting under the LG Transparency Code.
 - 6.3 A review of the Remedies rules (in the Public Contract Regulations 2015) which currently favour aggrieved suppliers, and increase the threat of legal challenge against councils.
 - 6.4 The central collection of data about suppliers and proposal to develop a central 'debarment register'.
 - 6.5 Improved access to training for procurement and commercial staff across the public sector (although our experience is that much of this is very much focussed on central government without a proper understanding of what local government does).
7. However, despite the welcome headlines and executive summary in the Green Paper we have some concerns about the detail. For example:
 - 7.1 Removal of the threshold for the existing Light Touch Regime will put a huge additional burden on councils to introduce additional processes for services such as adult social care, children's services, and passenger transport. An estimate from a county council suggests that instead of undertaking four procurement exercises a year for one particular service they will need to undertake 104 exercises in this one service alone.
 - 7.2 The proposal that councils will need to publish in full all the tender documents they have received from all bidders once they have selected a preferred bidder for a procurement will cause issues relating to commercial confidentiality, needing to restart a procurement completely if a small error has been found as all the bids have been published and could be some unfair advantage.
 - 7.3 The proposal that only the Cabinet Office will be able to declare a 'crisis' under the new rules. If there is a local 'crisis' then councils will need to ask Cabinet Office for permission to use the 'crisis' rules to undertake emergency procurements. (For example, emergency accommodation, sandbags and clear up/reinstatement operations following large-scale local flooding.)
 - 7.4 We are all for there being simplicity around the existing regulations, however, Government is proposing to exclude NHS procurement rules from the simplification. A problem for councils who very often collaborate with NHS on delivering healthcare services. There will be continued confusion and debate about which set of rules to follow.
 - 7.5 A one-size-fits all approach which does not recognise the breadth of different markets that councils contract in. Lack of understanding that a contract for social care will be very different to a contract for window cleaning.
 - 7.6 The proposal that there will be a central 'oversight body' run by the Cabinet Office "to oversee public procurement with powers to review and, if necessary, intervene to improve the commercial capability of contracting authorities". The oversight body will monitor and assess gaps in commercial capability and will

have powers to issue improvement notices with recommendations to drive up standards in individual contracting authorities. And where the recommendations are not adopted the unit could have recourse to further action such as spending controls.

- 7.7 The tone of the document comes across as policing/enforcing rather than supporting and we don't think the balance has been struck which will make access to Public Sector contracts easier for SMEs and new market entrants.

Implications for Wales

8. Councils in Wales are currently subject to the Public Contracts Regulations 2015 except for Part 4 provisions. The Wales National Procurement Service has its own policies in relation to public sector contracts. The Green Paper suggests that the procurement reforms will be for the whole of the UK.

Financial implications

9. No financial implications for LGA. Potential additional resource implications for councils due to administrative burdens

Equalities Implications

10. Equal treatment of potential suppliers is mandatory.

Next steps

11. We welcome members' views in particular relating to the issues raised in the Green Paper which we can include in our response.
12. The timetable for implementing the proposals in the Green Paper (apart from the National Procurement Policy Statement) will be 2022. LGA is working through the detail of much of how this will work at a granular level with Cabinet Office colleagues.
13. Officers will provide regular updates to members so their views can be taken into account in developing the best options for councils.