COUNCIL OF EUROPEAN MUNICIPALITIES AND REGIONS
CONSEIL DES COMMUNES ET REGIONS D'EUROPE

CEMR RESPONSE

Green Paper on e-Procurement

Brussels, January 2011

CEMR response to European Commission Green Paper on expanding the use of e-Procurement
COM(2010) 571 final 18.10.2010

CEMR Key Messages

1. CEMR welcomes the Commission's holistic and ambitious views expressed in the Green Paper which aspires to use ICT to cover all phases of the procurement process.

2. Any legislative proposals to simplify the use of e-procurement should be integrated into the planned review of the main public procurement Directives.

3. E-procurement plays a vital role in the simplification of the whole procurement process, and introduces efficiencies which lead to significant time and cost savings.

4. The European Union should leave sufficient room for manoeuvre for local and regional authorities to allow them to adapt, within their own capacity, their procedures to their needs with regards to the procurement process.

5. CEMR underlines that to ensure operability of different systems and avoid vendor lock-in, open standards and technological neutrality must be strictly observed.

6. The Commission has potentially a unique role to play in promoting standardisation and infrastructure issues; therefore it should adopt a gradual approach to develop common standards in question.

7. CEMR highlights that any new rules and procedures in the e-procurement field need to be compatible with increasing internal administrative reorganisations in the public sector; such as tender-free public-public cooperation agreements.

8. Sharing knowledge across borders is a key area where EU action can add-value and instigate real change. The Commission should therefore explore new ways to exchange experiences and transfer knowledge among local and regional actors.

9. CEMR welcomes the further development of the epractice.eu platform, as announced in the eGovernment Action Plan 2011-2015, however reiterates the need to extend the scope to local and regional practitioners.

10. Finally, there is a strong need to further build the capacity and understanding of staff dealing with e-procurement in public bodies, in order to optimize the use of these innovative tools.

Introduction

1. CEMR welcomes the Commission's initiative to launch a debate on expanding the use of e-procurement. Efficient purchasing of supplies, works and services is a cornerstone of effective public service delivery as undertaken daily by local and regional authorities across the EU.

2. It is therefore in the interests of local and regional authorities and their suppliers to ensure that every opportunity is explored to widen access to e-procurement and to simplify the legal regime governing their use. The Commission's Green Paper, coupled with the major review of the public procurement Directives expected this year, provides just such an opportunity.

General remarks

3. CEMR sees real benefits in a coordinated approach to public procurement policy overall at EU level. This includes the potential for more developed and competitive markets and a greater choice of providers, leading in turn to potentially lower costs or better quality.

4. E-procurement can play an increasingly important role in these processes. In particular e-procurement can drive simplification of the whole procurement process and introduce efficiencies which lead to significant cost and time savings. The reduced consumption of paper resources also brings important environmental benefits.

5. Significant progress has been made by leading local and regional authorities over the past decade in changing from manual to e-procurement systems. As the Green Paper notes, e-procurement is far from universal practice however and much more still needs to be done to make e-procurement the norm in terms of public purchasing.

6. It must be noted that action is required on two fronts. Not only must contracting authorities be encouraged to lead the changeover from paper-based to e-procurement technologies, but suppliers also need to have incentives to adopt the required technologies, procedures and attitudes.

7. The goal should be to provide an EU legal framework which facilitates, but does not make mandatory, end-to-end e-procurement systems for a majority of purchases. Such systems should be capable of incorporating all the elements potentially required during an e-procurement: tenders, auctions, bid submissions, e-catalogues, e-ordering and e-invoicing/payment. Currently these discrete elements are often available but not integrated or interoperable.

8. CEMR therefore welcomes that the Commission takes a holistic and ambitious view of e-procurement in the Green Paper: aspiring to use ICT to cover all phases of the procurement process. As a principle of good governance therefore, any legislative proposals from the Commission to simplify the use of e-procurement should be integrated into the planned review of the main public procurement Directives as a whole and not developed as

separate legislation (as discussed in 7.2a of the Green Paper). This is because offline procurements are likely to become the exception during the period that the revised directives will be in force (perhaps 2015-2025).

Respect for local & regional decision-making: the importance of non-mandatory approaches

9. The principle of local and regional self-government is an essential cornerstone of Europe's multi-level governance system and is explicitly recognised in the Treaty on the European Union.

10. The Protocol on Services of General Interest outlines the 'wide discretion' which local and regional authorities must have in how they provide, *commission* and organise such services. This is in line with the 'freedom to procure' principle promoted by CEMR and its member authorities[1].

11. The European Union should provide the legal framework and ensure a minimum of relevant common standards needed, but leave sufficient room for manoeuvre for local and regional authorities to allow them to adapt their procedures to their needs and within their capacity. This does not require detailed regulation, but ensure smooth communication between the parties and systems involved.

Promote interoperability and encourage alignment between systems, but don't impose single e-procurement technologies

12. It is important that the European Commission takes action to ensure interoperability of the different systems. Therefore, and in order to avoid vendor lock-in, open standards and technological neutrality need to be the rule.

13. In fact the Commission should consider the possibility of removing some type of procurements from the scope of the Directives if they are undertaken electronically as an incentive to promote the take up of e-procurement.

14. The Green Paper raises the prospect (Q5) of mandatory e-procurement legislation for certain purchases. To impose mandatory e-procurement at the EU level on certain products, services, processes or procedures, would run contrary to local and regional self-governance. Flexibilities on the other hand will allow new and innovative e-procurement approaches to be explored and tailored to the specific procurement needs of the local and regional level.

15. Additionally, at times of budgetary constraints in several Member States, it should be up to the local and regional administrations themselves to decide whether they invest public funds in e-procurement technologies. Such spending in new technologies should not be mandated by the EU.

16. The preferred option would be for the EU to clarify the possibility for individual Member States to specify e-procurement procedures in national legislation should they wish to. In this way, and in line with subsidiarity, appro-

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1   See CEMR's policy paper ‚over-reliance on public procurement as a policy instrument'

priate levels of detail can be developed within the Member State. However, interoperability and common standards needs to be ensured.

17. The Commission should adopt a gradual approach to develop common standards in question. E-signatures and time-stamps for example necessarily need to have a commonly agreed format EU wide for security purposes.

18. The European Commission should not develop e-procurement solutions, even if they will be free to use as open source. Instead, the Commission should support standardisation initiatives like CEN workshops. The workshop CEN/BII, now in its second phase, works with standardisation and implementation guidelines in order to reach interoperability. It covers both pre and post award procurement processes. The Commission potentially has a unique role in promoting standardisation and infrastructure issues. The EU's strength lies in ensuring the Treaty principles of equality, transparency, and non-discrimination, rather than developing single processes or single standards for e-procurement at EU level.

19. In order to facilitate for suppliers and also to give possibilities for automatic evaluation, standards for e-catalogues are desirable. Currently, suppliers often fill in information about their articles and prices in tables. However, there is no standard for the structure and the information content. It should therefore be made easier for the suppliers, by standardising the information required when giving tenders to public sector and maybe also private sector; in a technical form of, for example a table, or new technology that would be developed. Therefore development of e-catalogue standards and also work regarding product classification standards facilitates and makes e-procurement more efficient. eMarketplaces, however, would be an example of an e-procurement element, which should be left to develop as suits the public authority and Member State in question.

E-procurement and legal certainty

20. E-procurement encourages increased use of procurement, not just above the threshold level. We nevertheless welcome the recognition in the Green Paper (point 3.2) that any future e-procurement initiatives from the Commission would only affect above threshold procurement (Treaty provisions notwithstanding).

21. A second set of thresholds applying to e-procurement based on the total value of procurements running through an e-procurement system as outlined in 7.2 should be avoided as it would add complexity to the legal regime.

22. E-procurement is often seen as innovative but having less legal certainty as paper-based procurements. The revised Public Procurement Directives (scheduled for 2012) therefore need to clearly signal that e-procurement in all phases is in line with the EU rules.

23. In particular the Commission should signal that the use of e-procurement in all phases of the procurement will not be seen as discrimination against those suppliers not equipped with the appropriate technologies.

24. The use of third party private sector e-procurement providers puts the onus to comply with the rules on the economic operator as well as the public body. E-procurement therefore has the potential to spread liability for breaches of the procurement rules more equally between the public authorities, the e-procurement provider, and the economic operator. This is welcome as it encourages a collective, rather than conflictive approach to resolving any compliance issues.

Specifics of e-procurement

E-tendering

25. Making tender documents available online, and allowing online submissions has produced much faster response times from bidders and should continue to be encouraged.

26. EU work should focus on improving interoperability between existing standards of e-procurement platforms. At the same time, work on new common and open standards needs to be stimulated. There should be sufficient time for adaptation or shifting to these new standards.

27. Wherever possible, and in order to reduce administrative burdens and encourage SMEs, the provision of documents and certificates should only be placed on the winning bidder. More verification should be done post-award, and less should be done pre-award. This would make the process simpler and result in savings.

E-signatures

28. Requirements for the use of e-signatures, should differentiate between basic transactions and transactions with sensitive data and the different phases of the procurement procedure

29. Onerous technical requirements for bidder authentication can act as a barrier to operators in those Member States where (advanced) digital signatures are not yet commonplace and / or expensive. The use of user names and passwords is should suffice for basic transactions and at stages where no sensitive data are transferred.

30. Higher standards should be applied on sensitive transactions, with the possibility to require further authentication from the bidders if there is a doubt over their legitimacy.

Dynamic Purchasing Systems (DPS)

31. We note that DPS are currently not used much in practice. There is a need to tackle the cause of the low levels of use, which is the fact that contracting authorities need to place a further advert asking if any other suppliers want to be included before inviting suppliers on the system to bid. This is a burdensome requirement and adds time constraints and complexity to a

useful procurement model. Less complex e-solutions should be developed, allowing further bidders to join in until a certain moment.

32. The term e-marketplace should replace the term dynamic purchasing system as it is more recognisable to practitioners. E-marketplaces can be an effective way of improving the procurement process as they provide a level playing-field allowing suppliers from other Member States to compete.

E-Auctions, E-catalogues, E-ordering, E-invoicing

33. e-Auctions are currently delivering some of the most tangible benefits of e-procurement as a whole. One of the primary drivers for their use is the significant savings that can be realised through e-auctions, in particular on supplies and services.

34. E-catalogues allow costs to be minimised. They avoid duplication and increase compliance as they are much easier to maintain accurately than manual processes.

35. E-catalogues should be searchable based on the green criteria of the products contained within.

36. E-ordering brings efficiency into the procurement processes. It makes it possible to match an invoice against the order and makes e-invoicing very efficient.

37. E-invoicing brings significant savings and ensures a prompter issuing of the invoice by the supplier and a more prompt payment by the public authority.

38. The Commission should therefore consider new ways to encourage, but not mandate, the greater use of e-auctions, e-catalogues, e-ordering and e-invoicing.

Cross-border procurement

39. Despite the significant focus on cross-border procurement in the Green Paper, the main need at the moment is to facilitate e-procurement within Member States, as domestic transactions make up the vast majority of procurements. As the Green Paper acknowledges cross border procurement of all forms, whether electronic or not, is currently limited.

40. EU initiatives such as PEPPOL and e-CERTIS are very much welcome as examples. Since cross-border e-procurement is very limited, the Commission could also promote more standardisation work. This would bring benefits for e-procurement within the Member States. Promoting, at EU-level working with best practice examples and professional capacity is also strongly recommended, in order to get the e-procurement 'basics' right within the Member States (please see point 54 for more details).The focus should also be on promoting interoperability, and aligning e-procurement systems.

Public-public cooperation

41. Any new rules and procedures in the e-procurement field need to be compatible with increasing internal administrative reorganisations in the public sector such as tender-free public-public cooperation agreements to share front-line or back-office services between public authorities.

42. Combined e-procurement solutions should be promoted allowing multiple authorities to share the cost of common systems.

43. However, collaboration amongst public sector bodies is also often frustrated by the procurement rules as new contracting authorities can't join a collaboration after the contract is advertised. The upcoming revision of public procurement directives should address this issue and provide a pragmatic solution for public-public cooperation.

SMEs

44. Access to e-procurement systems seems to be more difficult for smaller businesses which still do not sufficiently benefit from public tender procedures. As the backbone of the European economy, it should be ensured that enterprises of all sizes can benefit from new e-procurement initiatives and technologies.

Best Practice

45. Sharing knowledge across borders is a key area where EU action can add value and drive change.

46. The Commission should explore new ways to exchange experiences and transfer e-procurement knowledge across the EU and among local and regional actors. This may involve developing a network of 'change agents' in the e-procurement field across the EU.

47. International peer reviews, where small teams of e-procurement experts from one region review the activities of another region, may also help with this process.

48. We welcome the announcement in the European Commission's eGovernment Action Plan 2011-2015 to develop the epractice.eu platform into an effective tool for exchange of experience and information for Member States eGovernment practitioners, and strongly advocate for extending the scope to the local and regional practitioners.

Professional capacity & cultural issues within local & regional authorities

49. There is a need to further build the capacity and understanding of staff dealing with e-procurement in public bodies. Whilst there are examples of leading technologies and leading expertise in many local and regional authorities, expertise is not universal.

50. At European level, measures to improve professional capacity could be supported through of the PROGRESS programme or the ICT Policy Support Programme (part of CIP).

51. Furthermore, the social partners could be encouraged to take actions to raise awareness and encourage training measures, aiming at modernising public administration, also at local and regional level.

52. In order to encourage public authorities, the Commission needs to articulate the business case for investment in e-procurement platforms and provide the public sector with examples that show the savings the up-front investment in new technologies will generate over time.

53. Any changes in the e-procurement legal framework should also be communicated in plain language via guidance tailored to the needs to public bodies, and in particular at local and regional level.

54. The Commission should recognise and address any cultural resistance to change, including risk aversion. In particular initiatives should address the issue of officials who choose procedures which minimise legal uncertainty rather than procedures which maximise value for money.

55. In addition, there is also a need to educate bidders on the use of e-procurement platforms both pre and post the award process. Smaller suppliers in some sectors may suffer from lower ICT-budgets or less ICT capability as regards use of e-procurement technologies.

Final remark

56. CEMR supports the production of the e-procurement road map suggested in the Green Paper and looks forward to working with the EU on the details of such a plan.

57. CEMR also appreciates that we have been invited to present our view at the Commission's e-procurement hearing on November 2010 and looks forward to contributing to the further discussions on e-procurement, along with the wider review of the procurement directives as a whole.

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