



29 October 2010

To All Directors of Children's Services

By email

Millburn Hill Road
Science Park
Coventry CV4 7JJ

Tel: 024 7641 6994

Fax: 024 7641 1418

Email: becta@becta.org.uk

www.becta.org.uk

Dear Colleague

School Management Information Systems and Value for Money 2010

You may recall that Terry Piggott wrote to you in December last year regarding the changing landscape in regard to Information Management needs of both schools and local authorities. Terry also highlighted the continuing concerns being expressed by both local authorities and the supply side in relation to the operation of the MIS marketplace and the specific procurement obligations that fell to local authorities.

He confirmed that Becta felt it appropriate to conduct an independent market review primarily in order to establish how best to advise local authorities how they might meet their procurement responsibilities.

We wrote again in February to confirm that Atkins had been appointed to conduct the initial stages of that work – a Market Study comprising, amongst other things, an online survey open to all local authorities and a series of interviews with twenty authorities and with MIS suppliers. I would like to thank all the authorities who participated in that Market Study process and have pleasure in enclosing Becta's report on the issues which have emerged and the recommended way forward.

The evidence collected during the Market Study did highlight some quite difficult issues and the report and recommendations are designed to provide advice and guidance to help local authorities ensure that their arrangements for the procurement of school MIS products and services are in accordance with EU and UK procurement law. The report also indicates a number of ways in which costs and bureaucratic burdens may be reduced, competition and choice enhanced and overall value for money improved.

The key area of concern which has emerged relates to the widespread use of annual MIS contract renewal practices which we consider, on the basis of advice received, are not in compliance with EU and UK procurement law. The total annual value of MIS licence renewals is between £38 million and £44 million with about 80% of that business being awarded to a single supplier without a call for competition.

NOT PROTECTIVELY MARKED

We recognise that the interplay between EU and UK procurement law and the acquiring and updating of school MIS solutions is complex and the extent to which any procurement behaviour conforms with or breaches the law will depend on the facts of a particular case, including the wording of any associated OJEU notice. Ultimately, of course, such decisions are a matter for the courts and legal advice should be sought in specific circumstances. We have set out our understanding of the relevant legal framework in our report.

In summary, we consider that when a local authority renews on a year-on-year basis its MIS support contract it is, in procurement terms, awarding a new contract which **must** comply with EU and UK procurement law. Where an aggrieved supplier considers that the legal requirements have not been followed, the Remedies Directive, introduced into UK law in December 2009, makes it easier for them to challenge and potentially stop contract awards. We believe that there is a significant risk that the procedures that many local authorities are currently using for MIS annual contract renewals could face a challenge.

If a court rules the MIS contract ineffective it **shall** impose a civil financial penalty on the contracting authority. Additionally, a court ruling of Ineffectiveness could mean that for an MIS support renewal the whole agreement would be regarded as ineffective and this could mean that the licence to use is also terminated if the support is not separable from the licence terms. So the consequences for local authorities of non-compliant procurements are potentially serious.

Overall, just over 20% of the local authority MIS procurement practices reported during the Market Study fell into categories that were considered likely to be compliant with procurement law. Over 16% of the cases reported were categorised as unlikely to be compliant. In over 63% of the cases reported the responses indicated the local authority could not identify the basis on which the product had originally been procured and thus may well have difficulty in defending a procurement law challenge.

Recommendations on Procurement

Our report recommends that where a local authority cannot demonstrate that the basis on which they are procuring MIS systems and supplier-provided support comply with procurement law, they should move quickly to establish EU-compliant market-testing arrangements.

We recommend that where a local authority is unable to demonstrate compliance with EU and UK procurement law, they should limit the scope of un-competed MIS contract renewals they intend to make to that which is permissible under the only supplier exemption, i.e. to basic software maintenance such as bug fixes and changes necessary to facilitate alterations in government reporting requirements. Such basic support should **not** include additional functionality or new software modules.

We further recommend that local authorities examine the opportunity to protect themselves and their schools from some of the potentially significant consequences of a court ruling that their MIS supply and maintenance arrangements are in breach of EU and UK

procurement law, by the use of an Open Journal of the European Union Voluntary Ex-Anti Transparency (VEAT) notice. More detail on this can be found in the body of our report.

Where local authorities have contracting arrangements for MIS supply and support which do comply with procurement law we recommend they should consider if the potential cost reductions available for entering into a multi-year contract with their supplier represent value for money.

When market-testing their MIS provision we recommend the local authority should seek to limit the possibility of supplier lock-in by mandating the SIF interoperability standard.

The arrangements for the provision of MIS support were not a detailed focus of the Market Study and did not fall within the scope of the online survey. The local authority interviews did however explore the nature of the MIS support arrangement in place and the overwhelming model (in 75% of those interviewed) was that the support was provided via a local authority support team. In many cases such support was “recharged” to schools.

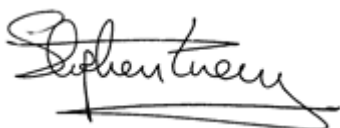
Whilst it is clear that MIS support teams provide valuable expert services to schools, it is likely that this provision will come under additional cost pressures in the light of the financial pressures being faced by schools and local authorities. We believe the best way to ensure the on-going provision of such support is by local authorities coming together to form a shared service arrangement.

We have also recommended that the Department considers the significant reductions in procurement costs which would flow from the establishment of a national procurement framework for MIS systems and Learning Platforms which schools and local authorities would have the freedom, but not the obligation, to use.

We have provided several mechanisms through which further clarification can be provided. Firstly, we are happy to respond to individual queries by letter or email. Such requests should be directed to Becta’s Head of Information Management Karen.Mitchell@becta.org.uk .

Additionally, subject to demand, Becta will hold face-to face-follow up sessions in December, during which we will be happy to provide any further clarification required. If you would be interested in attending a session please e-mail Andrea.Morrall@becta.org.uk

Yours faithfully



Dr Stephen Lucey
Executive Director, Strategic Technologies