Mystery Shopper Service Progress Report:
Trends from the First 18 Months
December 2012

Background

On 11 February 2011, The Prime Minister and Minister for the Cabinet Office announced a series of measures to open up public procurement to greater participation by SMEs. One of the announcements made was the launch of the Mystery Shopper service. This service exists to provide a structured mechanism for suppliers of all shapes and sizes as well as others, such as trade organisations, to raise concerns about public procurement practice and processes. This can be done on an anonymous basis in order that concerns can be raised without suppliers feeling they may jeopardise their ongoing commercial relationships. In line with the Government's commitment to transparency, reports of cases investigated are published on the Cabinet Office website: http://www.cabinetoffice.gov.uk/resource-library/mystery-shopper-results.

When the scheme was launched in 2011, its remit was to investigate referrals which pointed towards apparent poor practice, including the range of measures that were announced to open up supply markets to greater participation by SMEs. The scope and remit of the scheme has been extended since then to include supply chain issues. These include prompt payment of sub-contractors and the opening up of supply chain opportunities so that smaller companies have more visibility of opportunities to sub-contract to bigger suppliers within larger government contracts. Since the launch of the scheme we have received over 300 referrals. An analysis of these referrals is presented in the Annex. This progress report advises contracting authorities of the main issues raised under the scheme and our recommendations to tackle them.

Pre-Qualification Questionnaires (PQQs)

The most common type of case involves the use of pre-qualification questionnaires (PQQs) and particularly the approach that contracting authorities take to the assessment of a supplier’s financial capacity to perform a contract. For example, a small construction firm raised concerns in a local authority procurement that smaller firms would be disadvantaged as more marks were given in the PQQ for firms with higher turnovers. We also saw a case involving a central government agency where high levels of turnover were called for in the PQQ for a bailiff services contract. In both these cases the contracting authorities altered their approach. Increasingly we are seeing bids from new forms of supplier such as employee mutuals. We saw cases where these types of bodies struggled to satisfy financial requirements because they were asked for financial guarantees which were not easily available to them as start-up enterprises.

We have also had referrals concerning the length and complexity of PQQs. We have seen examples of this concerning a number of NHS Trusts, central government
organisations and local government bodies. In response to these referrals we issued Procurement Policy Action Note \[\text{http://www.cabinetoffice.gov.uk/resource-library/procurement-policy-note-0112-use-pre-qualification-questionnaires}\]. This sets out that Central Government Departments, including their Executive Agencies and Non Departmental Bodies, must not use PQQs for procurements below the EU thresholds. Where PQQs are used the Cabinet Office has produced a standard PQQ template for goods and services. This is designed to be streamlined and its approach to assessing financial strength of suppliers is based on the holistic approach set out in the Cabinet Office’s Supplier Financial Appraisal guide. The standard PQQ calls for a pass/fail approach to assessing a supplier’s financial strength so that extra weighting is not given to larger suppliers. When we see mystery shopper referrals where PQQs are an issue our advice is to use the standard questions in goods and services contracts.

The standard PQQ also makes it clear that private sector experience must be given equal weight to experience in the public sector. This is to ensure that new entrants to public sector markets are not disadvantaged simply because they have not previously contracted with the public sector. We saw an example of this in a referral concerning a small training company who had not previously supplied the public sector and who was bidding for a contract with a county council. The council adjusted its approach and clarified that it welcomed bids from all supplier with relevant experience.

We have also seen cases where PQQs called for bidders to have insurance in place at the point that they bid for work. We saw examples of this in PQQs used by some NHS Trusts when contracting for pathology services. In these cases we recommended that insurance should properly be dealt with as a contract condition. This is because requiring suppliers to have insurance in place that they may not need if they did not win the contract would create additional costs and barriers.

**Procurement Strategy: pre-procurement engagement**

We have seen a number of cases where procurement strategies were lacking pre-procurement engagement, which inadvertently led to periods of clarification, with technical issues being raised by bidders or changes being made to documentation, which in turn made the procurement process longer than necessary. Pre-competition engagement, prior to the advertising of requirements, would have prevented supplier issues by allowing them the opportunity to raise and work through any queries and thus shape the tender.

In one case, a tender specification was very different to what was originally advertised and in another, a framework was advertised and then a notice cancelling the project was issued some months after the tender closing date with the justification that the structure of the contract was not in line with current market conditions. In both cases, we made the recommendation that for future procurements, pre-competition engagement should be undertaken to ensure that requirements are ready and to avoid wasting the time of both the contracting authorities and potential suppliers, leading to more efficient procurement. Procurement Policy Action Note 04/12, \[\text{http://www.cabinetoffice.gov.uk/resource-}\]
Framework Agreements

We have had a number of mystery shopper referrals concerning the design of frameworks, especially from SMEs. For example, we had referrals concerning Government Procurement Service (GPS) Frameworks for environmental services and consultancy services. In the first case, the SME was concerned that the approach to dividing different specialisms into lots did not go far enough and it would force him, as a specialist in noise pollution, to sub-contract to a larger supplier. In the second referral, a consultancy SME was concerned that a requirement for a certain number of staff to be deployed in certain specialisms would prevent him competing. In both cases GPS adjusted their approach.

We have also had referrals where SMEs have been required to sub-contract to larger suppliers who are party to a framework agreement in order to continue to provide services, sometimes at more cost to the contracting authority. An example of this was a small contract for accountancy services let by a Non Departmental Public Body. In this case future requirements will be let through advertising on the Contracts Finder procurement portal.

When considering calling off from a framework, we advise that contracting authorities consider if that approach presents the best method of obtaining value for money. For example, for low value procurements a tendering process using the Dynamic Marketplace http://gps.cabinetoffice.gov.uk/i-am-buyer/run-further-competition/running-low-value-open-competition may provide better value for money.

When designing a framework agreement we advise that contracting authorities think carefully about how to enable a wide range of suppliers to compete. This should be a key consideration of their pre-procurement engagement with the supply market. Particular thought should be given to ensuring that requirements are broken into appropriately sized lots which will allow specialist suppliers (many of whom are SMEs) to compete with an equal chance of success.

Consortia and sub-contracting

We have received referrals from SMEs concerning contracts which appear to be suitable for bids by consortia. An example of this was a potential SME consortium which wanted to form to bid for an environmental services framework agreement. We introduced the SME to the contracting authority who were able to take account of issues the potential consortium raised in the design of their procurement.

We had a referral concerning a GPS framework where SMEs were concerned that they did not have sufficient early warning to form a consortium. Contracting authorities should bear in mind that SMEs are able to bid for larger contracts by joining together to form consortia and effective pre-competition engagement with the market is crucial to enable that to happen. We recommend that the approaches set out in our standard lean operating processes are followed: http://gps.cabinetoffice.gov.uk/about-government-procurement-service/lean-
capability/lean-sourcing. These place an emphasis on effective early engagement with supply markets.

We also received a referral where a contracting authority decided to procure an IT solution from a framework agreement. They alerted smaller companies who may not have been party to the framework agreement that this is what they were going to do so that they might consider entering into sub-contracting arrangements with suppliers who were party to the framework. Unfortunately insufficient time was allowed for these commercial relationships to form. Again we emphasised the importance of effective pre-procurement engagement to enable these types of supply chains to form.

**Specifications**

Cases have been referred where specifications are very tightly drawn and do not allow for equivalents. An example of this is where we recommended that equivalents should be considered in a number of cases involving vehicle parts, where manufacturers’ own brand parts had been specified but equivalent parts from other manufacturers, which may offer better value for money, had not been considered.

We reminded the contracting authorities that Regulation 9 of the Public Contracts Regulations 2006 requires equivalents to be considered alongside any technical specifications made. In addition to this being a legal requirement, allowing for equivalents enables suppliers to be much more innovative when designing solutions.

**E-procurement systems**

E-procurement systems are increasingly used and offer a modern and efficient way of managing procurement processes. However, we have had referrals where problems with the administration of e-procurement systems have led to suppliers not having PQPs and tenders considered. An example of this was a referral where a local authority received documents from two companies with very similar names. They thought they had dealt with our mystery shopper’s submission but they had not. The local authority accepted our recommendation to pause their process and consider the submission made. We also had a referral where a local authority gave a supplier more time to complete a PQP when he had experienced technical problems with the council’s e-procurement system.

We advise contracting authorities to ensure that contact details they hold for suppliers are accurate and that they should be careful when they receive documents from suppliers with similar names. In cases where contracting authorities’ administrative or technical problems have disadvantaged suppliers, we always recommend that more time is allowed to enable suppliers to complete relevant actions.

**Allowing suppliers sufficient time to respond to low value tenders**

Central Government Departments, their agencies and other bodies for which they are responsible, are already required to advertise all procurements for contracts over £10,000 on Contracts Finder [http://www.contractsfinder.co.uk/](http://www.contractsfinder.co.uk/). We recommend that
a similar approach is taken by all contracting authorities in order to provide suppliers with a single and free point of access to public sector contracting opportunities.

We have had mystery shopper referrals where suppliers have not had sufficient time to respond to lower value tenders below the EU thresholds. For example, we had a referral where a small IT contract was placed on Contracts Finder by a central government agency with a deadline for response of less than a week. This can narrow competition and potentially impact on the achievement of value for money. Contracting authorities should carefully consider the value and complexity of each low value procurement and ensure that a reasonable amount of time is allowed to enable suppliers to respond.

**Contract Management**

We have had referrals where suppliers approaching the end of contracts have not been told what will happen next in a timely manner. Examples of this include an NHS body which had decided to adopt a new approach to the repair of surgical instruments, a police service who had decided to procure dry cleaning services through a framework agreement and a local authority that altered their arrangements for taxi services. In these cases we recommended that as part of normal contract management, incumbent suppliers are told in good time what the next steps will be. This should be done in a contract management meeting and contracting authorities should not rely on, for example, messages from e-procurement systems to alert incumbents to new arrangements. Care must, of course, be taken not to give incumbents any advantage in any future procurement exercise but they should be given sufficient information to enable them to plan their future business.

**Prompt payment of contractors and sub-contractors**

We have received referrals where payments due have not been made in accordance with the terms of the contract. Examples include referrals concerning NHS Trusts where SMEs were waiting for overdue payments in respect of work completed. Working with the Department of Health, we intervened to ensure arrears were paid. In these cases we recommend, as part of normal contract management, that robust processes are in place for the prompt payment of invoices and that these are clearly communicated to suppliers. We advise there should be a clear point of contact for the resolution of any queries about invoices and that contract managers should work with their finance departments to ensure that valid invoices are paid promptly.

Central Government Departments, their agencies and other bodies for which they are responsible, must ensure that prime-contractors pay sub-contractors within 30 days of the receipt of a valid invoice in goods and services contracts. We have received referrals where sub-contractors have experienced problems. One example was a Government Department contract for medical services. We worked closely with the Department to resolve the issues in this case and the Department ensured that all payments were made. Contracting authorities are reminded that they must actively monitor sub-contractor payments as part of their contract management processes and take appropriate action when sub-contractors are not being paid in accordance with contractual conditions.
Charging for procurement documents and inclusion in catalogues

We have had referrals where contracting authorities have made charges to send documents to potential suppliers or levy charges to include suppliers’ products in catalogues or other advertising material associated with framework agreements. Examples we have seen included a university which charged £50 to provide a pre-qualification questionnaire and a local authority who charged a fee to include details of supplier’s products in a catalogue which was to be sent to schools and colleges in relation to an educational supplies framework. In both cases charges were being applied when no business had been won. We advise against this type of approach as charges can create barriers for smaller organisations in bidding for public contracts. We advise that charges should not be made to suppliers for procurement documents and that any charges made by contracting authorities in relation to the promotion of framework agreements and other catalogue type arrangements should be related to the value of business a supplier derives from those arrangements, rather than an upfront charge.
Annex A: Mystery Shopper Emerging Themes

From February 2011 to October 2012 we received over 300 cases, covering both Central Government and the Wider Public Sector, which we have classified into the following groups of higher level issues:

- Problems with the procurement process
- Problems with the bureaucracy of the whole process
- Problems with contract management
- Problems with technology and systems

81% of all cases were concerned with the Procurement Process.

The issues that fall within the Procurement Process category range from problems with PQQs through to problems with a lack of debriefs to unsuccessful suppliers. Increasingly we are seeing referrals concerning the Procurement Strategy. A breakdown of issues follows, illustrating that the PQQ (which covers both the financial requirements and the length and relevance of the questions) and the Procurement Strategy are major issues:
Issues with the Procurement Strategy are primarily around the use of frameworks and the perception still held by SMEs that larger suppliers are favoured when frameworks are being put together.

**Sectors**

The majority of cases have involved the Wider Public Sector, which includes Local Authorities, the NHS and some other Arms Length Bodies. 30% of cases relate to Central Government.

![Pie chart showing the distribution of cases by sector: 66% Wider Public Sector, 30% Central Civil Government, 3% Supplier to Central Government Dept, 1% Case not taken on.]

**Impact of the Mystery Shopper Scheme**

We are currently seeing 78% of all our closed cases resulting in a positive outcome. This includes changes being made to a live procurement, recommendations accepted to change future procurement practice or cases where we find nothing wrong with the procurement process but we are able to assist our mystery shopper in understanding what has happened.